March 28 1871
Mr Wilson
vs
Judge Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~286.~~ 113

SETH H. MANN AND MARY H. MANN, APPELLANTS,

vs.

THE ROCK ISLAND BANK.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED SEPTEMBER 10, 1868.

appeal dismissed
Jno Mason

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1 Circuit Court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the Circuit Court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the second Monday of September, A. D. 1864, being the 12th day of September, A. D. 1864.

Present: Hon. Samuel F. Miller, presiding judge of said court and Honorable Andrew G. Miller, district judge; Darius C. Jackson, marshal, A. Scott Sloan, clerk.

Among other the following proceedings were had, to wit:

THE ROCK ISLAND BANK, complainant,
vs.
SETH H. MANN and MARY H. MANN, defendants. } In equity.

Be it remembered that heretofore, to wit, on the tenth day of May, in the year of our Lord one thousand eight hundred and sixty, the above-named complainant, by N. C. Gridley, esq., its solicitor, filed in the office of the clerk of the District Court of the United States of America for the district of Wisconsin, its bill of complaint against the above-named defendants, in the words and figures following, to wit:

Bill of complaint.

To the judge of the District Court of the United States for the district of Wisconsin, in equity:

Humbly complaining unto your honor, your orator, the Rock Island Bank, a corporation organized and existing under and by virtue of the laws of the State of Illinois, complains of Seth H. Mann and Mary H. Mann, wife of said Seth H. Mann, citizens of the State of Wisconsin, defendants.

And thereupon your orator complains and says that on or about the 1st day of January, A. D. 1853, the said Seth H. Mann, and Mary H. Mann, who then was, ever since has been, and now is wife of the said Seth H. Mann, removed from the State of Wisconsin to
2 Rock Island, in the State of Illinois; and your orator is informed and believes, and, therefore, thereupon shows that the said Seth H. Mann was then very poor, and had and owned neither real or personal property, and that the said Mary H. Mann had not at that time any property, real or personal in her own seperate right.

Your orator further states on information and belief, your orator was then and ever since has been and is now a corporation organized and doing a banking business under the general banking law of the State of Illinois; and that about the 1st day of January, A. D. 1853,

at said Rock Island, the said Seth H. Mann was elected by the board of directors of your orator its cashier, and then and there the said Seth H. Mann accepted said office and entered upon the duties of his said office at an annual salary of about fifteen hundred dollars, and that said Seth H. Mann continued to be such cashier until about the 10th day of June, 1856; and that during all the time he was such cashier he had the general superintendence and control of all the business of your orator and managed and controlled all its affairs.

That on the 8th day of August, A. D. 1855, at the city of New York, the said Seth H. Mann, being still cashier of your orator, made and entered into a certain contract, in writing in his own individual name, but for and on account of your orator, with the Manufacturers and Mechanics' Bank of Columbus, Georgia, a banking corporation organized and doing business under the laws of the State of Georgia, dated the day and year last aforesaid, in and by which said written contract the said Seth H. in his own name, but for your orator, agreed to loan to said Manufacturers and Mechanics' Bank the sum of thirty-three thousand dollars for the term of four years from the 15th day of October then next and for one year thereafter, if said contract should not be sooner closed and settled, without interest; and that said Manufacturers and Mechanics' Bank therein and thereby agreed, in consideration of the loan above mentioned to furnish and on or before the first day of October then next to deliver to the order of

3 Seth H. Mann, his heirs or assigns, to his or their agent in the city of New York, circulating bills or notes of the said Manufacturers and Mechanics' Bank to the amount of one hundred and ten thousand dollars, the same to remain without interest for the term of four years from said 15th day of October then next, and for one year thereafter, also without interest during which last-mentioned year the said contract was expected to be closed, so that the said business should be settled up as nearly as possible within five years from the said 15th day of October, 1855; and the said Seth H. Mann therein and thereby farther agreed, upon receiving the entire amount of said issues in said contract so agreed to be delivered to him, to provide and deliver to the said Manufacturers and Mechanics' Bank his, said Mann's paper, based upon said contract and made to represent said loan of issue in part of said bank, in the form of notes, bills of exchange, and sight drafts on his correspondent, (meaning the correspondent of your orator,) in the city of New York, to an amount not exceeding seventy-seven thousand dollars, the said sight drafts to be used only to redeem said issues when presented at the bank in said Columbus for redemption, and for no other purpose whatsoever; the issue so redeemed were (it was therein agreed) to be returned to the agent of said first party upon presentation of any of said drafts, and the amount of the sight drafts so used in their redemption were therein agreed to be replaced by other similar draft or drafts to be sent to the said bank in Columbus, so as to keep the amount good; and that the said Seth H. Mann therein further agreed to protect said issues received by him under said contract in such manner as to prevent, if possible, their going home to Columbus for

redemption by receiving the same on deposit or in payment for exchange or coin at the counter of your orator, and by providing for their redemption at such western points as might be deemed necessary by said Seth H. Mann to secure a good and profitable circulation at rates current for the notes of Kentucky and Virginia banks, and also in the city of New York at the same rate that said bank redeemed its other issues in that city; and that it was therein
4 and thereby jointly agreed that the circulating notes to be furnished to said Seth H. should be from the plate of four fives, engraved by Danforth Wright & Co., for said Manufacturers and Mechanics' Bank, and the impressions from said plates hould not be used for any other purpose during the continuance of said contract; and that whenever any of the said notes should become mutilated they might be returned to the agent of the said Manufacturers and Mechanics' Bank or sent to the agent of said Seth H. (meaning the agent of your orator) in the city of New York, and new ones of like amount should be issued and sent to one of said agents in New York and be delivered to the agent of said Seth H. (meaning your orator's agent) in exchange for said mutilated notes; and that the said Manufacturers and Mechanics' Bank agreed therein and thereby to remit to New York within thirty days after the day of date of the said contract, to the agent of your orator, an amount sufficient to reimburse your orator on account of its payment towards engraving said plate and printing therefrom; and it was in said contract further jointly agreed that at the expiration of the term for which said contract was made (being the 15th day of October, 1860) the said Seth H. should pay to said Manufacturers and Mechanics' Bank, or to its agent in New York, a sum equal to the difference between the loan first in said contract mentioned and the one hundred and ten thousand dollars of issues aforesaid, provided all of said issues should have been delivered as in said contract agreed, but not otherwise, leaving the balance of said issues after that time to be redeemed by the said Manufacturers and Mechanics' Bank, which said balance said last-named bank therein and thereby agreed to redeem and protect from loss or damage to said Seth H. Mann, and your orator, on account of having paid out said issues, and agreeing to receive them from the public, and that the said sum might be paid in the issues of said Manufacturers and Mechanics' Bank, or in any other funds of equal value, and that upon the payment of such sum or balance by said Seth H. his heirs or assigns, the said Manufacturers and Mechanics' Bank
therein further agreed to return and deliver up to said Seth
5 H. all and every of said notes, bill of exchange, and sight drafts which might previously have been delivered to said Manufacturers and Mechanics' Bank, and not before returned to said Seth H.; and the said Seth H. therein and thereby further agreed to have your orator guarantee the fulfillment of said contract on the part of said Seth H., and also to endorse his notes and bills of exchange aforesaid; which said contract was then and there made and signed and sealed by said Seth H. Mann with his own individual name and seal, and executed and signed by the said Manufacturers and Me-

chanics' Bank by E. T. Taylor, its president, and J. H. Fonda, its cashier, and then and there delivered by and between the respective parties thereto in duplicate, as by said duplicate original contract, now in said Seth H. Mann's possession, will more fully and at large appear, a copy of which is hereto attached marked Exhibit No. 1.

Your orator further shows, that although said contract was in terms entered into by said Seth H. in his own name individually, that nevertheless all the negotiations leading thereto were conducted by said Seth H. as cashier of your orator, and that so the said Manufacturers and Mechanics' Bank, when they so entered into said contract, well knew, and that said Seth H. Mann immediately after the making of said contract returned to your orator's banking house in Rock Island aforesaid and deposited the said duplicate of said contract received by him with the papers belonging to your orator, in its said banking house, where the same remained until about the time when said Seth H. ceased to be cashier of your orator, when the said Seth H. took the same away with him, and now has the same in his possession, and that the said Seth H. Mann really and in fact entered into said contract as the agent of your orator, and for and on its account and for its benefit, and that so the said Manufacturers and Mechanics' Bank, when said contract was entered into, understood, and well knew.

Your orator further shows that about the month of August, A. D. 1854, the said Seth H., in the city of New York, acting for and on behalf of your orator, and as its cashier, had in the name of your orator
6 entered into a parol agreement with said Manufacturers and Mechanics' Bank of nearly the same import, tenor, and effect as the contract hereinbefore set forth, excepting that your orator therein and thereby agreed to loan to said Manufacturers and Mechanics' Bank the sum of thirty thousand dollars instead of thirty-three thousand dollars; and said Manufacturers and Mechanics' Bank therein agreed to deliver to your orator ninety instead of one hundred and ten thousand dollars in the said bank bills of said Manufacturers and Mechanics' Bank, and the said Seth H. had advanced to said Manufacturers and Mechanics' Bank, of the funds of your orator, thirty thousand dollars, under said parol contract, and that the said Seth H. afterwards returned from New York to said Rock Island with a draft of contract to be executed by Marcus B. Osborn, as president of your orator, evidencing said agreement as agreed upon in parol, but that said Osborn declined to sign the same as president, and that therefrom said contract remained in an imperfect form at the time when and in the place and stead thereof the contract hereinbefore set forth was reduced to writing as hereinbefore set forth, which thirty thousand dollars so advanced, and interest reckoned thereon at three thousand dollars, constituted the said thirty-three thousand dollars mentioned in said first-named written contract, and was the only way that said thirty-three thousand dollars mentioned as aforesaid was ever advanced or loaned under said first-named written contract to said Manufacturers and Mechanics' Bank, and that the said Seth H. had previous to the said 8th day of August, 1855, re-

ceived from said Manufacturers and Mechanics' Bank twenty thousand dollars in the said promissory notes of said bank described in said contract hereinbefore first set forth, which he received from said Manufacturers and Mechanics' Bank to hold till said agreement should be definitely settled and reduced to writing, and to return to said Manufacturers and Mechanics' Bank, in case said contract should not be for any reason definitely settled and consummated, and that said twenty thousand dollars of said promissory notes remained so as aforesaid in his, said Seth H.s' hands, when said first-mentioned contract was executed, and that then the said twenty thousand
7 dollars in said promissory notes, commonly called bank bills, became the notes and money of your orator, under and by virtue of said first named written contract, and that it was then and there understood and agreed by and between the said Seth H. and the said Manufacturers and Mechanics' Bank, its officers and agents; that the said twenty thousand dollars in the said bank bills should be considered as and should be taken to be so much advanced, delivered, and paid by said Manufacturers and Mechanic's Bank to your orator, under and in pursuance of said contract herein first set forth; and your orator is informed and believes that by virtue of said agreement and understanding, and of the terms of said contract, said twenty thousand dollars so held by said Seth H., when said first-named contract was ordered into, as hereinbefore stated, thereby became the chattles and money of your orator, and constituted and formed and was a part of the said one hundred and ten thousand dollars which said Manufacturers and Mechanic's Bank agreed in said first-named contract to deliver to said Seth H., acting for your orator as hereinbefore stated.

Your orator further states that previous to the execution of said first-named written contract and after the entering into said contract as hereinbefore stated in parol, the said Manufacturers and Mechanics' Bank had caused a part of said bills to be struck off and executed, and subsequently caused said bills to be struck off and executed up to the amount of one hundred and ten thousand dollars in all, and no more, which were all (including said twenty thousand dollars so held by said Seth H. when said first-named contract was entered into as aforesaid) delivered by said Manufacturers and Mechanics' Bank to your orator, under and in pursuance of said first-named contract.

But your orator further shows that the said Seth H , designing and craftily intending to injure and defraud your orator, concealed from your orator and all its officers and stockholders the fact that said twenty thousand dollars had been so held and received by him under said contract, and ever thereafter, until after he ceased to be cashier as aforesaid, represented and pretended to your orator, its
8 officers and stockholders, that said Manufacturers and Mechanics' Bank had never paid over and delivered to your orator under said first-named written contract above ninety thousand dollars in said bank bills; and so your orator, its officers, board of directors and stockholders verily believed, until after the said Seth H. ceased to be cashier as aforesaid, and that for the purpose of so

deceiving and defrauding your orator, the said Seth H. never accounted with your orator of and for the said twenty thousand dollars of bills so received by him, which said bills so received by him were when he so received the same of the value of twenty thousand dollars.

And your orator further shows that immediately after the making of said first-named written contract, and after the said Seth H. had returned to Rock Island, and after said Manufacturers and Mechanics' Bank had advanced and delivered to your orator the other ninety thousand dollars in the said bank bills, the said Seth H., as cashier as aforesaid, caused notice to be published in the public newspapers, circulated in the vicinity of said Rock Island, that your orator would take said bills on deposit and in payment, and redeem the same at your orator's banking house, thereby making your orator legally liable for the amount of all of said bills which should thereafter pass into public circulation, and that thereafter the said Seth H. put all of said twenty thousand dollars in said bills so received by him and unaccounted for as aforesaid into circulation in the vicinity of said Rock Island, and as cashier as aforesaid paid out and put in circulation from your orator's banking house the said other ninety thousand dollars in said bills, which said Seth H. represented as aforesaid were all that had ever been by said Manufacturers and Mechanics' Bank paid and delivered over to your orator under said written contract, and that too, without putting upon said twenty thousand dollars of said bills so unaccounted for by him any mark to designate or distinguished them from said ninety thousand dollars so received by your orator in fact, thereby fraudulently mingling said twenty thousand dollars and said ninety thousand dollars of said bills in the general circulation which your orator was made liable to redeem,
receive and pay for by said notice published as aforesaid, and
9 to protect and repay to said Manufacturers and Mechanics' Bank under said first-named written contract.

And your orator further shows that immediately after the 10th day of June, 1856, the said Seth H. and Mary H. Mann removed and returned from Rock Island to Beloit, in the State of Wisconsin, where they have ever since resided and now reside.

And your orator is informed and believes that the said Mary H. Mann now holds and is seized in fee simple of the following real estate in the said county of Rock, described as follows, viz: A part of section 25, town. 1 north, of range 12 east, particularly described as follows: beginning in centre of Turtle creek, in a line running north 88¼° west from a point in east line of said section 19 chains and 91 links, south of quarter section post; thence north 88¼° west, 2,030 links, to centre of Beloit and Janesville road; thence south 35¾° west in centre of said road 732 links, to the northwest corner of land conveyed to J. V. Smith by B. F. Baker and wife; thence south 87¼° east on line of said Smith land about 2,700 links to centre of said creek; thence up said creek to place of beginning, containing 14⅓ acres.

Also another piece in Beloit in said county, described as follows,

viz: beginning at the northwest corner of land deeded by Lucy Ann Harris to Eliza M. Hinman; thence north 1½° east 12 chains and 8 links to the southwest corner of land sold by Hawkins to Rufus Clark; thence south 88° east along the south line of said Clark land 30 chains and 15 links to the centre of the Beloit and Janesville road; thence south 35 and ½° west along the centre of said road 8 chains and 47 links to the southwest corner of said Clark land, on the east side of said road; thence south 88¼° east 24 chains and 52 links to the range line; thence south on the said range line 2 chains and 54 links; thence north 88¼° west 25 chains and 30 links to the centre of said road; thence south 35½ west along the centre of said road 3 chains and 15 links to the northeast corner of the said Hinman land aforesaid; thence north 88¼° west 22 chains and 5 links to the place of beginning, containing about 38 and one-half acres, excepting about six acres of land sometime conveyed by Samuel S. Johnson
10 to one Blanchard, off of the south side of the last above described premises on the west side of said road.

Also another piece of land particularly described as follows: part of section 25 on said town. described as follows, commencing on the range line on the bed of Turtle creek, then running south 1½ west on the range line 120 links to the southeast corner of a six acre and a half lot owned by said Mary H. Mann; thence westerly on the south line of said lot 610 links to the centre of Turtle creek; thence southerly 144 links to a point 650 links west of the range line; thence southeasterly 484 links. to a point 393 links west of the range line; thence south 47° east to the south line of a 14½ acre lot owned by said Mary H. Mann, west of said creek; thence north 66° 27′ east 570 links; thence north 18° 28′ west 541 links to the place of beginning, containing about 3 and ¾ acre. Also another piece in section 30 of said town, described as follows, beginning at a point in the centre of the Milwaukee road, 1,565 links northeasterly from the point where the range line crosses the said road, and running thence north 51¾° east 456 links; thence 41½° west 933 links to the centre of Turtle creek; thence down the centre of said creek to the northeast corner of land sometime deeded by said Mary H. Mann to W. T. Miller; thence south 41½° east to the place of beginning, 4 and 5-100 acres. Also another piece of land in the town of Turtle, county of Rock, and State of Wisconsin, described as follows, to wit, beginning in the range lines between the towns of Beloit and Turtle, 521 links north of the corners of section 25, 30, 31 and 36, and the centre of the Milwaukee road; thence running north 51¾° east in the centre of said road 2,021 links; thence north 41½° west 933 links to the centre of the Turtle creek; thence down the centre of said creek to the said range line; thence south ½° west on said range line 120 links to a stake; thence west on the south line of land sometime owned by one Blodget, 610 links to the centre of the creek; thence down the centre of said creek to said range line; thence south ½° west on said range line 544 links to the place of beginning, containing about 20 acres.

11 And your orator is informed and believes and therefore

thereupon shows, that the said Seth H. Mann purchased all said real estate from and with said twenty thousand dollars, so by him received and by him unaccounted for on the avails thereof, and procured the titles of said lands to be conveyed to the said Mary H., so that she could pretend to hold the same as her seperate estate, and he the said Seth H. be thereby enabled to conceal from your orator the ownership of said lands; and that the said Seth H. pretending to be the agent of the said Mary H. has caused said lands to be greatly improved, and has erected thereon a large and elegant mansion, in which the said defendants and their family now reside; and that said lands were paid for, and said improvements and said mansion were made and erected thereon with said twenty thousand dollars or the avails thereof so belonging to your orator and so received and unaccounted for by said Seth H. as hereinbefore stated; and that the said Mary H. has not received from any source whatever other than the said Seth H., her husband, any property or estate whatever.

That your orator has repeatedly and particularly at Beloit, in the said district of Wisconsin, on the first day of February, A. D. 1860, requested the said Seth H. Mann to reckon with and account with and to your orator for said twenty thousand dollars, and unaccounted for by him said defendant as aforesaid and the avails thereof and interest thereon, but that the said Seth H. so to do has ever, and still does refuse; and that your orator is unable to prove except by the oath of the said Seth H. Mann the precise amount of proceeds realized by him from said twenty thousand dollars in bank bills by him unaccounted for as aforesaid and the times respectively when he so received avails therefrom.

To the end therefore that the said Seth H. Mann and Mary H. Mann, defendants, and their confederates, may respectively full, true, direct and perfect answers make, upon their respective corporal oaths, according to the best and utmost of their respective
12 knowledge, information and belief, to all and singular the matters and charges aforesaid, and that as fully and particularly in every respect as if the same were here again repeated, and they respectively thereunto particularly interrogated, and more especially that they may respectively set forth and discover according to the best and utmost of their knowledge, information, remembrance and belief—

1. Whether said Seth H. Mann, and said Mary H. Mann, defendants, are and how long they have been husband and wife.

2. Whether the said Seth H. Mann and Mary H. Mann did not sometime, and at what time remove from Wisconsin to Rock Island, in the State of Illinois; and whether the said Seth H. was not very poor; and whether the said Seth H. then owned any property, and if any what, where situated, what was its situation, description, nature and condition, real or personal, and what was its value; and whether the said Seth H. then had any means or money; if so, what were they and how much, and where situated; and whether the said Mary H. then had any money, real or personal in her own seperate

right, and what was the nature, amount, condition value of the property or money so held by her, and when, at what place, from whom, and in what manner did she receive and how and for what purpose did she receive the same.

3. Whether the said Mary H. had held or owned in her own right any money or property at the time when she intermarried with the said Seth H., and its precise nature, description, amount and value, and in what State or country did the said defendants intermarry; whether the said Mary H. has ever and when since the intermarriage of the defendants received from any person and what, and who, any and what kind and amount, description, and value of property, whether she has since as aforesaid received any amount of money, and what amount and from whom received, and when, and where received, and how the same has been invested and disposed of,

13 and where is the same, or the avails thereof.

5. Whether your orator is not a banking corporation, organized and doing business under the general banking law of the State of Illinois, and how long it has been such corporation; and the said Seth H. was not at some time, and what time elected by the board of directors of your orator its cashier, and whether he accepted said election, and whether he did, and when, enter upon the duties of his said office at an annual salary of about fifteen hundred dollars, or some other and what sum, and how long he continued such cashier, and whether, while he was such cashier, he had the general superintendence and control of the business of your orators.

6. Whether, on or about the 8th day of August, 1855, or upon some other, and what day, the said Seth H., being still your orator's cashier, made and entered into a certain contract in writing, a copy of which is attached to this bill of complaint and marked exhibit No. 1, or make or enter into a contract resembling said written contract, a copy of which is attached as aforesaid, and if said attached copy is not a true copy of the contract entered into in that behalf, then set out and discover fully the nature, terms, and tenor of the contract which the said Seth H. Mann did make in that behalf on or about the day and year last aforesaid, and set forth a copy thereof in full.

7. Whether the said Seth H. was not, when he made and entered into said contract, or whatever contract was made in that behalf on or about the day and year last aforesaid, acting as the cashier of your orator, and whether he did not make and enter into said contract in his own individual name, but on account and for the benefit of your orator, and whether the said Seth H. ever advanced or loaned of his own money any part of the said thirty-three thousand dollars in said contract agreed to be advanced or loaned; and whether the said Seth H., as cashier as aforesaid, did advance or loan under and in pursuance of said contract the said thirty-three thousand dollars in the money assets or credits of your orator, and how, when, where, by whom, and to whom, and in what manner, and from whose funds, assets, and credits was said sum of thirty-three

14 thousand dollars loaned or advanced under said contract.

8. Whether all the negotiations between Seth H. and said Manufacturers and Mechanics' Bank, which resulted in said written contract, were not made and had between said Seth H., as cashier of your orator, and the said other party to said contract, and whether said Manufacturers and Mechanics' Bank did not understand and know, and whether its officers and agents did not understand and believe and know that said Seth H., in entering into said contract, was acting in his character as cashier of your orator, and for your orator's benefit and on your orator's accouut.

9. Whether, about the month of August, A. D. 1854, the said Seth H. Mann did not, acting as cashier as aforesaid, and for and on account of your orator, enter into and conclude in parol with said Manufacturers and Mechanics' Bank a contract similar to the said written contract, excepting that your orator agreed to loan thirty thousand dollars instead of thirty-three thousand dollars, and was to receive ninety thousand instead of one hundred and ten thousand dollars in the bills of said Manufacturers and Mechanics' Bank, or what other and different were the terms of said parol contract, (discover and set for the same in full,) and whether the said Seth H. Mann did not return to Rock Island and present to Marcus B. Osborn, president of your orator, a draft of contract reduced to writing containing the substance of said parol agreement, and whether the said Seth H. had not received from said Manufacturers and Mechanics' Bank, prior to the entering into said written agreement, twenty thousand dollars in the bills of said last-named bank, under said parol contract, or to hold until said contract should be reduced to writing; or for some other, and fully discover what other or different purpose, and whether said Seth H. had not, prior to entering into said written contract, advanced to said Manufacturers and Mechanics' Bank, thirty thousand dollars of the money or funds of your orator, under and in pursuance of said parol agreement, and whether said thirty thousand dollars and interest thereon, reckoned at three thousand dollars, did not constitute the said sum of thirty thousand dollars in said written contract, recited to have been advanced by said Seth H. to said Manufacturers and Mechanics' Bank, under and in pursuance of said written contract.

10. What amount of the bills of said Manufacturers and Mechanics' Bank did it, said bank, advance in all under said written contract, and to whom, and when, and where, deliver the same respectively.

11. Did said Manufacturers and Mechanics' Bank deliver under said contract in writing one hundred and twenty thousand dollars in its said bank bills under said contract; if so, state and discover fully when and where, at what time or times, respectively, what amount at each time, to whom each amount, and to whom, when, and where every amount thereof was delivered respectively.

12. Whether the said Seth H. ever communicated to any officer or stockholder of your orator; if so, who, when, and where, that he, said Seth H. had received and held said twenty thousand dollars in said bank bills, and whether the said Seth H. did not always pretend

to your orator, its officers, agents, and stockholders, that said Manufacturers and Mechanics' Bank had never advanced under said written contract more than ninety thousand dollars.

13. Whether said Seth H., as cashier as aforesaid, caused notice to be published at or near said Rock Island that your orator would receive at its counter on deposit, or in payment or otherwise, and how otherwise, the bills of the said Manufacturers and Mechanics' Bank, or if not that particular notice, what notice in relation to said bank bills the said Seth H. did cause to be published, and when and where published.

14. Whether the said Seth H. disposed of said twenty thousand of said bills so received by him by paying them out at the counter of your orator and mingling them with the other ninety thousand dollars in said bills, or how the said Seth H. did dispose of said twenty thousand dollars in said bills, or whether he now has
16 and holds them undisposed of, or any of them, and how many of them.

15. Whether said Seth H. now has any of said twenty thousand dollars of said bills so received by him and unaccounted for by him as aforesaid; if any, how many, and what has been done with those thereof, and upon what consideration did he part with them.

16. Did the said Seth H. ever have or hold twenty thousand dollars, or any other and what sum in the said bank bills described in said written contract, which he did not account for with your orator; if so, when, where, to whom, for what purpose, upon what consideration did he receive the same, and how, and upon what consideration and occasion did he part with or dispose of the same.

17. Did the said Seth H. in any way mark or distinguish said twenty thousand dollars in said bank bills so received and unaccounted for by him, so as to distinguish them from the ninety thousand dollars in said bills which he pretended to your orator the said Manufacturers and Mechanics' Bank had delivered to your orator under said contract in writing.

18. Whether the said Mary H. is seized and possessed in fee, or holds, or pretends any and what title to or estate in any of the real estate in this bill of complaint described, and what is the exact legal and sufficient description thereof, and of whom, and when, and for what consideration she purchased each piece thereof respectively, and when, where, of whom, and in what manner she received the several sums she paid therefor respectively, set forth and discover fully.

And that the said written contract may be declared and decreed to have been made and entered into by the said Seth H. Mann, for, on account of, for the benefit of, and as the agent of your orator, and that the said Seth H. may be ordered, adjudged, and decreed to account to and with your orator for, of, and concerning said twenty thousand dollars in the said bank bills so received by him and unaccounted for as aforesaid, and that the said Seth H. Mann may be ordered, adjudged, and decreed to pay to your orator the said
17 sum of twenty thousand dollars, and interest thereon from the time and times respectively when he disposed of the same, or

changed or converted the same into other funds or money, and that your orator may have a personal decree therefor against said Seth H. Mann, and that said real estate hereinbefore described may be adjudged and decreed to have been purchased with your orator's said money as aforesaid; and that the said Seth H. & May H. may be ordered, adjudged, and decreed to convey all of said real estate, and the improvements thereon, to your orator; or that said real estate hereinbefore described, may be ordered to be sold, and the avails thereof applied to the payment of said twenty thousand dollars and interest thereon, which said Seth H. may be ordered, adjudged, and decreed to pay to your orator and that a receiver of said real estate, with the usual powers of receivers in like cases, according to law and the practice of said court may be appointed.

And that your orator may have such other or further relief as the nature of its case may require, and as shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orator a writ of subpœna issuing out of and under the seal of said court, to be directed to said Seth H. Mann and Mary H. Mann, defendants, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, that they, and each of them, be and appear before your honor in the said District Court in equity, then and there to answer the premises, and further to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience.

And your orator shall ever pray, &c.

NELSON C. GRIDLEY, *Solicitor.*
MATT. H. CARPENTER, *Of Counsel.*

Note, underwriting.

18 The said Seth H. Mann and the said Mary H. Mann are each required to answer, each for himself and herself, the interrogatories above written, and numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

NELSON C. GRIDLEY,
Solicitor for Complainants.

Exhibit No. 1.

This agreement, made the eighth day of August, A. D. 1855, by and between Seth H. Mann, of Rock Island, and State of Illinois, the party of the first part, and the Manufacturers and Mechanics' Bank, Bank of Columbus, "Georgia," the party of second part, witnesseth: That said first party hereby covenants and agrees in consideration of the undertakings and stipulations of said second party hereinbefore recited to be kept and performed, to loan to the said second [second] party the sum of thirty-three thousand dollars, ($33,000,) the receipt whereof is hereby acknowledged, for the term of four years from the 15th day of October next, and for one year

thereafter if this contract shall not be sooner closed and settled without interest.

The said party of the second part hereby covenants and agrees, in consideration of the loan above mentioned, to furnish, and or before the first day of October next to deliver to the order of said [said] first party, his heirs or assigns, to his or their agent in the city of New York, circulating bills or notes of "The Manufacturers and Mechanics' Bank of Columbus, Ga.," to the amount of one hundred and ten thousand dollars, ($110,000,) the same to remain without interest for the term of four years from said 15th day of October next, and for one year thereafter, also without interest, during which last-mentioned year this contract is expected to be closed, so that the business shall be settled up as nearly as possible within five years from said 15th day of October, 1855.

The said first party hereby further agrees, upon receiving the entire amount of said issues herein agreed to be delivered to him, to provide and deliver to the said second party his paper based upon this contract and made to represent said loan of issue, in part in said bank in the form of notes, bills of exchange, and eight drafts on his correspondent in the city of New York to an amount not exceeding seventy-seven thousand dollars, ($77,000,) the said sight-drafts to be used only to redeem said issues when presented at the Bank in Columbus for redemption, and for no other purpose whatsoever. The issues so redeemed are to be returned to the agent of said first party upon presentation of any of said drafts and the amount of the sight draft or drafts so used in their redemption are to be replaced by other similar draft or drafts to be sent to the bank in Columbus so as to keep the amount good.

The said first party hereby further agrees to protect said issues received by him under this contract in such manner as to prevent, if possible, their coming home to Columbus for redemption by receiving the same on deposit, or in payment for exchange or coin at the counter of the Rock Island Bank, and by providing for their redemption at such western points as may be deemed necessary by said first party to secure a good and profitable circulation at rates current for the notes of Kentucky and Virginia banks, and also in the city of New York, at the same rate that said bank redeems its other issues in that city.

It is hereby jointly agreed that the circulating notes furnished to said party shall be from the plate of four fives, engraved by Danforth, Wright & Co., for said second party, and the impressions from said plate shall not be used for any other purpose during the continuance of this contract; whenever any of the said notes shall become mutilated, they may be returned to the agent of said second party, or sent to the agents of said first party, in the city of New York, and new ones of like amount shall be issued and sent to one of said agents in New York, and be delivered to the agent of said first party in exchange for said mutilated notes. The said second party is else within thirty days to remit to New York to the agent of Rock Island Bank an amount sufficient to reimburse said bank, on account of its payments towards engraving said plate and printing therefrom.

20 It is also hereby agreed jointly, that at the expiration of the term for which this contract is made, (being the 15th day of October, 1860,) the said first party shall pay to said second party, or to its agent in New York, a sum equal to the difference between the loan first above mentioned and the one hundred and ten thousand dollars of issues aforesaid, (provided all of said issues shall been delivered as herein agreed, but not otherwise,) leaving the balance of said issues after that time to be redeemed by said second party, which said balance said second party hereby agrees to redeem and to protect from loss or damage said first party and Rock Island Bank on account of having paid out said issues and agreeing to receive them from the public. The said sum may be paid in the issues of said second party, or in any other funds of equal value; and upon the payment of such sum or balance by said first party, his heirs or assigns, the said second party hereby agrees to return and deliver up to said first party all and every of said notes, bills of exchange, and sight-drafts which may previously have been delivered to said second party, and not before returned to said first party.

The said party further agrees to have Rock Island Bank guarantee the fulfillment of this contract in the part of said first party, and also to endorse his notes and bills of exchange aforesaid.

Witness the hand and seal of the party of the first part, and the hands and seal of the president and cashier of the party of the second part, the day and year above written.

[SEAL.] (Signed) S. H. MANN.

(Signed) E. T. TAYLOR,
Pres't of M. & M. Bank.

(Signed) J. N. FONDA,
Cashier M. & M. Bank.

In the presence of, as to the signatures of S. H. Mann and E. T. Taylor—
For J. H. Fonda.

Whereupon a subpœna issued, returnable the first Monday of June next, as follows:

21 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to Seth H. Mann and Mary H. Mann, greeting:

You are hereby commanded, that you personally appear before the judge of the District Court of the United States of America for the district of Wisconsin, in our Court of Chancery, in and for the district aforesaid, on the first Monday of June next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by the Rock Island Bank; and to do further, and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Seth H.

Mann and Mary H. Mann, if to be found in his district, and due return thereof make.

Witness the Honorable Andrew G. Miller, judge of the District Court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this tenth day of May, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fourth.

[L. S.]

J. M. MILLER, *Clerk.*
N. C. GRIDLEY, *Solicitor.*

It is ordered by our said court, that the said Seth H. Mann and Mary H. Mann, the defendants aforesaid, do enter their appearance in this suit in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

22 *Return.*

Subpœna returned, served on the within-named Seth H. Mann and Mary H. Mann, by delivering them, personally, a copy of this subpœna, this 12th day of May, 1860.

J. H. LEWIS, *Marshal.*
By A. ROGERS, *Deputy.*

Fees, $7 92.

Appearance.

MAY 31, 1860.

This day came the defendants, by their solicitor, Mr. Todd, and filed their appearance as follows:

U. S. District Court, district of Wisconsin.

THE ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN.

Please enter my appearance as solicitor for the defendants in this suit.

Yours, &c.,

S. J. TODD.

Beloit, Wis., May 29th, 1860.

To J. M. Miller, esq'r, clerk, &c.

Rule to plead.

JUNE 4, 1860.

On motion of N. C. Gridley, complainant's solicitor, it is ordered that the defendants plead, answer, or demur to the complainant's bill of complaint on file by the first Monday of July next.

Answer.

AUGUST 6, 1860.

This day came the defendants, by their solicitor, and filed their answer, as follows:

United States District Court for the district of Wisconsin.

THE ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN.

The answer of the defendants, Seth H. Mann and Mary H. Mann, to the bill of complaint of the Rock Island Bank, complainant.

These defendants now, and at all times hereafter, saving and reserving to themselves all manner of benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and imperfections in the said complainant's bill of complaint contained, for answer thereto, or to so much or such parts thereof as these defendants are advised is material or necessary for
23 them to make answer unto, these defendants answering, state that on or about the 1st day of September, A. D. 1852, they removed from the State of Wisconsin to Rock Island, in the State of Illinois, and that the defendant, Mary H. Mann, then was, and ever since then has been, and now is, the wife of this defendant, Seth H. Mann.

These defendants, further answering, admit, that at the time of their removal to Rock Island, this defendant, Seth H. Mann, was poor, and had and held no real estate, and but little personal property; but they deny that said Mary H. Mann had not at that time any personal property in her own separate right. And these defendants, further answering, state that said Mary H. Mann then held and owned two lots in the village of Beloit, in the State of Wisconsin, with a large house and other improvements thereon, subject to an incumbrance of about six hundred dollars, and that she also then had and held, in her own right, money and securities for the payment of money to the amount of four thousand dollars, or about that sum.

These defendants, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, further answering, state that on or about the the 1st day of July or August, 1852, this defendant, Seth H. Mann, had been elected cashier of the complainant, who then was, and ever since has been, and now is, a corporation organized and doing business under the laws of the State of Illinois; that he was so elected cashier of said defendant at the city of New York, in the State of New York, and not at Rock Island, in the State of Illinois, as stated in the said bill of complaint.

This defendant, further answering, states that after his
24 election, as before stated, this defendant, S. H. Mann, accepted said office, and removed to Rock Island, as above stated, for the purpose of entering upon the duties of such office, at the salary of fifteen hundred dollars per year, und continued to be such cashier until the 20th day of June, 1856, on which day his res-

ignation, as cashier, was accepted by the board of directors of said complainant, but that he continued to act as such cashier until the 7th day of July, 1856.

These defendants, further answering as aforesaid, admit that during all the time this defendant, Seth H. Mann, acted as such cashier, he had the general management, supervision, and control of all the business of the complainant, but that such management, supervision, and control, was exercised under the immediate supervision of M. B. Osborn, esq., its president, and subject also to the general supervision of the board of directors of the said complainant.

These defendants, the said S. H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, further answering, admit that on about the 8th day of August, A. D. 1855, at the city of New York, in the State of New York, this defendant,
Seth H. Hann, made and entered into a certain contract, in
25 writing, with the Manufacturers & Mechanics' Bank of Columbus, Georgia, a copy of which contract is hereunto annexed, marked schedule No. 1, and which these defendants make a part of this their answer to the complainant's bill of complaint. These defendants, further answering, state that said contract was made and entered into in the individual name, and upon the individual account of the defendant, Seth H. Mann, but that the same was intended by this defendant for the benefit of the said complainant.

These defendants, further answering as aforesaid, expressly deny that all the negotiations leading to the said contract were conducted by this defendant, Seth H. Mann, as cashier of the complainant, and they deny that said Manufacturers & Mechanics' Bank at the time it entered into said contract well knew or understood that this defendant had managed and conducted the whole of said negotiations as cashier of said complainant, as is stated in the said bill of complaint.

These defendants, further answering as aforesaid, deny that immediately after the making of said contract, this defendant S. H. Mann, returned to the banking house of complainant, at Rock Island
aforesaid, and deposited the duplicate of said contract re-
26 ceived by him with the papers belonging to the complainant in its said banking house, or that the same remained until about the time when the defendant, Seth H. Mann, left Rock Island; and on the contrary thereof, these defendants, further answering, state as aforesaid, that immediately upon the return of this defendant, Seth H. Mann, to Rock Island, or as soon thereafter as the same was received, the duplicate copy of said contract was placed with other private papers of this defendant, and he has since that time kept and held the same with other papers belonging to him, and that he now has and holds the same ready to be produced and proved as this honorable court shall direct.

These defendants, further answering as aforesaid, deny that the defendant, Seth H. Mann, really and in fact entered into the said contract as the agent of the complainant, and for or on its account, but they admit that the same was made by said S. H. Mann for the benefit of the complainant; and they further state as aforesaid, that

all the money ever paid over or advanced by the said Manufacturers & Mechanics' Bank upon or in pursuance of the terms of the said contract, was paid over to the said complainant and used by the said complainant.

These defendants, further answering, the said Seth H.
27 Mann, upon his own knowledge, and said Mary H. Mann, upon information and belief, deny that about the month of August, 1854, or at any time during the year 1854, this defendant, Seth H. Mann, in the city of New York, acting for or in behalf of the complainant and as its cashier, had in any way in the name of the complainant entered into a parol agreement with the said Manufacturers & Mechanics' Bank of nearly the same import tenor or effect as the contract hereinbefore set forth and marked schedule No. 1, a copy of which is hereto annexed; and they, further answering as aforesaid, deny that at any time during the year 1854 this defendant made any parol contract with the said Manufacturers & Mechanics' Bank, or any written contract with said bank, except as is hereinafter particularly stated and set forth.

These defendants, further answering, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, state that on or about the 20th day of October, A. D. 1854, this defendant, as the agent and attorney of Marcus B. Osborn, the president of the complainant, and in pursuance of a power of attorney given him by said Marcus B. Osborn, made and entered into an agreement in writing, by and between the said Manufacturers
& Mechanics' Bank on the one part, and the said M. B. Os-
28 born of the other part, a copy of which contract is hereto annexed, marked schudule No. 2, and which these defendants make a part of this their answer.

This defendant, Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, further answering, state that at the time the said contract by and between the said Manufacturers & Mechanics' Bank and said Osborn, was made and entered into, it was verbally agreed by and between this defendant, Seth H. Mann, and the said Manufacturers & Mechanics' Bank, that the said complainant, the Rock Island Bank, should and would loan to the said Manufacturers & Mechanics' Bank the sum of thirty thousand dollars, and within a few days thereafter, this defendant, Seth H. Mann, as the cashier of the said complainant, paid over to the officers and agents of the said Manufacturers & Mechanics' Bank the sum of thirty thousand dollars, and as security for the repayment thereof, this defendant, S. H. Mann, as such cashier, took three drafts of said Manufacturers & Mechanics' Bank, payable in forty-five and sixty days, amounting in all to thirty thousand dollars; and as collateral security for the payment of said drafts, he took from
29 said Manufacturers & Mechanics' Bank its bills of the denomination of $20, $50, $100, to the amount of thirty-eight thousand dollars in all.

These defendants, further answering as aforesaid, state that at the time said thirty thousand dollars was so loaned by this defendant, S.

H. Mann, as the agent and cashier of complainant, to the said Manufacturers & Mechanics' Bank, there was no understanding or agreement, express or implied, that the same should be renewed or continued after the maturity of the said drafts; but on the contrary thereof, it was expressly understood and agreed that the said Manufactures & Mechanics' Bank thould pay and satisfy the said drafts as they severally became due.

These defendants, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief further answering, deny that this defendant, Seth H. Mann, afterwards returned from New York to Rock Island with a draft of said pretended parol contract to be executed by Marcus B. Osborn as president of said complainant, evidencing any agreement as agreed upon in parol; and they in like manner deny that said Osborn declined to sign any such agreement, and that said contract remained in an imperfect form, as stated in said bill of complaint.

30 These defendants, further answering, state that the said Manufacturing & Mechanics' Bank neglected and refused to perform or fulfil the terms and conditions of the said agreement so made and entered into by and between said bank and said Osborn, and failed and refused to furnish to said Osborn said sum of one hundred and fifty thousand dollars mentioned in said contract, or any part thereof; and that said Manufacturers & Mechanics' Bank also failed to pay said sum of thirty thousand dollars so loaned and advanced to it, as hereinbefore stated, as the said drafts became due and payable, and that afterwards, and on the 8th day of August, 1855, at the time of the making and execution of the contract herein first mentioned and described, the said sum of thirty thousand dollars, with the interests thereon, remained and was due and unpaid from the said Manufacturers & Mechanics' Bank to the said complainant; and they admit that said sum of thirty thousand dollars and interest reckoned thereon at three thousand dollars constituted the said thirty-three thousand dollars mentioned in said first described contract, and was the only way that said thirty-three thousand dollars was ever advanced or loaned to said Manufacturers & Mechanics' Bank.

31 These defendants, further answering, as aforesaid, admit that previous to the 8th day of August, 1855, and about the 1st day of May, 1855, and after the terms and conditions of the agreement hereinbefore mentioned, bearing date August 8th, 1855, had been settled and agreed upon by letter, substantially as set forth in said contract, he received from said Manufacturers & Mechanics' Bank twenty thousand dollars in its promissory notes; and they, further answering, as aforesaid, state that the whole of the said twenty thousand dollars so received was paid over by this defendant, Seth H. Mann, into the funds of the said complainant, and were used and employed by the said complainant.

But these defendants, further answering, as aforesaid, deny that said S. H. Mann ever received from the said Manufacturers & Mechanics' Bank, its officers or agents, any other or further sum of money previous to the said 8th day August, 1855, which was paid over to,

or received by him in pursuance of any contract, in writing or parol, made by or in behalf of the said complainant, or in which the complainant was liable, or any way or manner interested; and they also, in like manner, deny that any such sum or any sum whatever, except as above stated, was paid

32 over to him or received by him from said bank to hold till said agreement, or any agreement, should be definitely settled and reduced to writing, and to return to said Manufacturers & Mechanics' Bank in case said contract should not for any reason be definitely settled and consummated, as stated in said bill of complaint; and they deny that the sum of twenty thousand dollars, or any other sum which had been received upon the terms stated in said bill of complaint remained in the hands of this defendant Seth H. Mann, when the contract first mentioned in said bill of complaint was executed.

And these defendants, further answering, as aforesaid, deny that any promissory notes, or money in the hands of the defendant Seth H. Mann, became the notes or money of the complainant, under and by virtue of said written contract first described in the complainants' bill of complaint; and they also, in like manner, deny that it was understood or agreed by and between this defendant Seth H. Mann and the said Manufacturing & Mechanics' Bank, that the said twenty thousand dollars, in bank bills, should be considered as, and should be taken to be, so much advanced, delivered, and paid by said Manufacturers & Mechanics' Bank to the complainant, under and in

33 pursuance of the contract first set forth in the complainants bill of complaint.

And these defendants, further answering, as aforesaid, deny that by virtue of said agreement, or of any understanding, or of the terms of the said contract, any money held by this defendant, Seth H. Mann, when the contract first mentioned and set forth in the complainant's bill of complaint was entered into, thereby became the chattels and money of the complainant; and they also, in like manner, deny that the same thereafter constituted or formed, or that the same became or was a part of the said one hundred and ten thousand dollars which said Manufacturers & Mechanics' Bank agreed in said contract to deliver to the defendant, Seth H. Mann, as stated in the said bill of complaint.

These defendants, further answering, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, state that about the first day of January, 1855, this defendant, Seth H. Mann, with the knowledge and approval of the said M. B. Osborn, president of said complainant, went from Rock Island aforesaid, to the city of New York, for the purpose of obtaining

34 payment or security for the payment of thirty thousand dollars so loaned to the Manufacturers & Mechanics' Bank, as heretofore stated; that previous to the time this defendant, S. H. Mann, left Rock Island, as aforesaid, the said M. B. Osborn revoked the authority or power of attorney before then given to this defendant as hereinbefore stated, and directed this defendant, S. H. Mann, not to make any new contract or agreement in the name of

said M. B. Osborn, and not to alter or modify the contract before then made in the name of said Osborn; that, at the time aforesaid, the said Manufacturers & Mechanics' Bank had failed and neglected to perform or fulfil any of the stipulations contained in the contract so made with said Osborn; and the same had become forfeited, and the said Osborn was no longer bound thereby, or in any way liable thereon; and the said Osborn directed this defendant, S. H. Mann, not to make any other or further contract or agreement with said Manufacturers & Mechanics' Bank, its officers or agents, upon which he, the said Osborn, should in any way become personally liable.

These defendants, further answering, as aforesaid, state that soon after the arrival of the defendant S. H. Mann in New York, he was informed by one Burr Higgins, that he had made a contract to purchase all the stock property and franchises of the said
35 Manufacturers & Mechanics' Bank, for which he, the said Higgins, had assumed and agreed to pay a bonus of thirty thousand dollars, and the said Higgins had and held in his possession circulating notes of said bank signed by its officers to a considerable amount, but to what amount these defendants are unable to state.

These defendants, answering in manner aforesaid, further state that said Burr Higgins proposed and offered to sell to this defendant, S. H. Mann, and to one William B. Hotchkiss, an interest in his said purchase, and to divide among them the circulating notes or issues of said bank in proportion to the amount of stock or interest to be held and owned by each of them respectively.

These defendants, further answering in manner aforesaid, state that afterwards, and on or about the 13th day of January, A. D. 1855, this defendant, S. H. Mann, and said Burr Higgins & William B. Hotchkiss, made and entered into articles of agreement for the purchase by this defendant and said William B. Hotchkiss of an interest in said bank, one part of which said agrement is now in the possession of this defendant, S. H. Mann, ready to be produced and proved as this court shall direct, a copy of which is hereto annexed,
36 marked and numbered schedule No. 3, and which these defendants make a part of this their answer.

These defendants, answering as aforesaid, further state that, at the time the said contract or agreement was made and entered into, the said Seth H. Mann had no power or authority to make and enter into the same for or on behalf of the said complainant, or said M. B. Osborn, or any other person, but that the same was made on his own individual account and responsibility, and at his own risk and for his own benefit, if any there should be resulting therefrom.

These defendants, further answering as aforesaid, state that, afterwards and on or about the 22nd day of January, 1855, this defendant, S. H. Mann, and said Wm. B. Hotchkiss and Burr Higgins, agreed upon and signed "By-Laws of Stockholders," in the said Manufacturers and Mechanics' Bank, which By-Laws were signed by them, respectively, in three parts, one part of which, signed by this defendant, Seth H. Mann, Burr Higgins and Wm. B. Hotchkiss, is now in the possession of this defendant, S. H. Mann, ready to be

produced and proved, as this honorable court shall direct, a copy of which is hereunto annexed, marked schedule No. 4, and which these defendants make a part of this their answer.

37 These defendants, further answering as aforesaid, state that afterwards, and on or about the 22nd day of January, 1855, and immediately or very soon after the said By-Laws were signed, as above stated, the said Burr Higgins paid over to this defendant, Seth H. Mann, twenty thousand dollars of the circulating notes of said Manufacturers and Mechanics' Bank, in pursuance of the terms and conditions of said contract and of said By-Laws; and this defendant, Seth H. Mann, thereupon gave to said Burr Higgins a receipt for said twenty thousand dollars, a copy of which is hereto annexed, marked schedule No. 5, and which these defendants make a part of this their answer.

These defendants, answering as aforesaid, further state that afterwards, and on or about the 13th day of March, 1855, this defendant, S. H. Mann, made and concluded an agreement with one Charles A. Wheaton, of Syracuse, in the State of New York, for the sale to the said Wheaton of the one-third part of his interest in said Manufacturers and Mechanics' Bank, so purchased by him of said Burr Higgins, which said agreement with said Charles A. Wheaton is now in possession of this defendant, S. H. Mann, ready to be produced and proved as this honorable court shall direct, a copy of which is hereto annexed, marked schedule No. 6, and which the defendants make a part of this their answer.

38 And that, after the said sale to said Charles A. Wheaton, the By-Laws of said Manufacturers and Mechanics' Bank were modified and altered so as to enable said Wheaton to circulate bills of the said Manufacturers and Mechanics' Bank in some of the southern States, a copy of which amendments or alterations of said By-Laws is hereto annexed, marked schedule No. 7, and which these defendants make a part of this their answer.

These defendants, answering as aforesaid, further state that afterwards, and on or about the 24th day of March, 1855, and for the purpose of securing the payment of the money assumed and agreed to be paid in said contract between this defendant, S. H. Mann and said Burr Higgins and Wm. B. Hotchkiss, this defendant, S. H. Mann, made and executed his own four promissory notes, to the amount in all of eleven thousand six hundred dollars, and delivered the same to Wm. H. Hunt, the former owner of the said Manufacturers and Mechanics' Bank, from whom the same had been purchased by said Burr Higgins, and at the same time he, the said S. H. Mann, endorsed and agreed to pay a note of Burr Higgins, dated on or about the sixth day of January, 1855, for the sum of three thousand four hundred dollars; and he also assumed and

39 agreed to pay a debt due to the Camden Bank, of the State of New York, of about three thousand dollars, making in all the sum of eighteen thousand dollars, which this defendant, S. H. Mann, assumed and agreed to pay, the same being three-fifths of the bonus agreed to be paid by said Burr Higgins to said Wm. H. Hunt, upon the purchase of said Manufacturers and Mechanics' Bank.

These defendants, further answering as aforesaid, state that all of said notes so given by this defendant, Seth H. Mann, and the whole of said indebtedness so assumed by him, remains unpaid, and he, the said Seth H. Mann, is still liable thereon to the amount of eighteen thousand dollars, with interest, and that the said complainant has never assumed or offered to assume, or pay any of said liabilities, or to relieve this defendant therefrom.

Nor did the said complainant ever claim or pretend that it had any right or interest in or to the said sum of twenty thousand dollars so received by this defendant, Seth H. Mann, from Burr Higgins, until about the 8th day of October, 1859.

These defendants, answering as aforesaid, further state that, at the time the said sum of twenty thousand dollars was so paid
40 over by said Burr Higgins to this defendant, Seth H. Mann, the said contract so made with the said M. B. Osborn had been entirely given up and abandoned, and that at that time, and for a long time thereafter, no negotiations were pending referring in any way to the use by the complainant of the bills of the said Manufacturers and Mechanics' Bank, and that the proposition which resulted in the making of the contract first described in the complainant's bill of complaint dated August 8th, 1855, was first made about the 30th day March, 1855, and that the terms and conditions of said contract were substantially agreed upon about the 12th day of April, 1855, and that afterwards, and on or about the 8th day of August, 1855, the said contract, with certain alterations agreed upon, was drawn up and signed.

These defendants, further answering, state on information and belief that, after the making and execution of said contract with said M. B. Osborn, and previous to the 1st day of November, 1854, the said Manufacturers and Mechanics' Bank had caused to be struck off bills of the denomination, and from the plate specified in the contract first described in the complainant's bill of complaint, to the amount of one hundred and eighty thousand dollars. And these de-
41 fendants are informed and believe, and therefore deny that said bank caused to be struck off said bills up to the amount of one hundred and ten thousand dollars in all and no more, including the said twenty thousand dollars so received by this defendant, S. H. Mann, from said Burr Higgins; and this defendant, Seth H. Mann, of his own knowledge, and said Mary H. Mann, upon information and belief, deny that one hundred and ten thousand dollars were ever delivered by said Manufacturers and Mechanics' Bank to the complainant under or pursuant to the terms of said contract, or pursuant to the terms of any contract or contracts, either in writing or in parol.

And these defendants, further answering as aforesaid, deny that this defendant, Seth H. Mann, concealed from the complainant, its officers or agents, the fact that he had received said twenty thousand dollars from said Burr Higgins until after he ceased to be cashier of the said complainant; and he also denies that the bills so received by him from said Burr Higgins were of the value of twenty thousand dollars.

These defendants, further answering, state that they are informed and believe that, at the time said bills were issued, no part of the capital stock of said Manufacturers and Mechanics' Bank had
42 been paid in as required by law, but that said bills had been issued in direct violation of the provisions of its charter, the same being an act of the legislature of the State of Georgia, entitled "An act to incorporate a bank in the city of Columbus, to be called The Manufacturers and Mechanics' Bank of Columbus," that the said bank, at the time this defendant received said twenty thousand dollars of said Burr Higgins, was wholly insolvent, and unable to redeem its issues, and that said bills were and still are worthless and of no value; and they further state, in manner aforesaid, that the capital stock of said bank has never been paid in as required by its charter, and that the said bills are not, and never have been, of any real value; but these defendants, answering as aforesaid, further state that on the 6th day of June, 1855, and until after the 8th day of August, 1855, the defendant, S. H. Mann, was informed and believed that the capital stock of said bank had been paid in as required by law, and during all the time aforesaid the defendant, S. H. Mann, supposed and believed that the bills of said Manufacturers and Mechanics' Bank were good for their nominal value.

These defendants, answering as aforesaid, further state that on or about the sixth day of June, 1855, and after the terms of
43 said contract of Aug. 8, 1855, had been agreed upon in substance, and after the said complainant had received twenty thousand dollars and no more of the one hundred and ten thousand dollars referred to in said contract, and more than four months after the return of this defendant, S. H. Mann, from the city of New York to Rock Island, this defendant, with the approval of the president and directors of the complainant, caused notice to be published in one or more of the public newspapers, in substance as near as these defendants now recollect that the complainant had made arrangements to use a limited amount of the issues of the Manufacturers and Mechanics' Bank of Columbus, Georgia, and would receive the same on deposit or otherwise in the same manner, and on the same terms that said complainant received the issues of Ohio, Kentucky, Virginia and Indiana banks; that these defendants have no copy of said notice, and are therefore unable to state the contents thereof more particularly.

These defendants, further answering upon information and belief, deny that the said notice made the said complainant legally liable for the amount of all of the bills of said Manufacturers and Mechanics' Bank which should thereafter be put into circulation.

And these defendants, further answering the said Seth H.
44 Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, deny that this defendant, Seth H. Mann, put into circulation all or any part of the twenty thousand dollars so received by him from said Burr Higgins, in the vicinity of Rock Island, and they also deny as aforesaid that as cashier of the said complainant this defendant, S. H. Mann, paid out or put in cir-

culation from the complainant's banking house the said twenty thousand dollars, or any part thereof.

These defendants, further answering as aforesaid, state that there was upon each of the bills composing the said twenty thousand dollars so received by the defendant, S. H. Mann, from said Burr Higgins, a mark or marks, by which it could be easily distinguished and designated from the bills composing and constituting the ninety thousand dollars paid over to the complainant upon said contract as hereinbefore stated.

These defendants, further answering as aforesaid, deny that the said bills were fraudulently mingled, or that the said twenty thousand dollars so received by this defendant, Seth H. Mann, and the ninety thousand dollars so received by the complainant, were in any way mingled by these defendants, or either of them, in the
45 general circulation of the said complainant mentioned and referred to in said notice.

These defendants, further answering, state that this defendant, Seth H. Mann, removed from Rock Island aforesaid to the city of Beloit, in the State of Wisconsin, on the 7th day of July, 1856, and not on the 10th day of June, 1856, as stated in said bill of complaint, and they admit that they now reside in Beloit aforesaid.

These defendants, further answering, admit that this defendant, Mary H. Mann, is seized in fee, and is the owner of about fifty-five acres of the lands described in the said bill of complaint, and that the land so owned by her is embraced and included in the description of lands set forth in said bill of complaint, and that she owns in her own right, subject to the incumbrances hereinafter mentioned, all the lands embraced and included in such description, excepting about twelve acres of the piece therein last described, and in which this defendant, Mary H. Mann, has no right, title, or interest.

And these defendants, further answering, deny that these defendants, or either of them, purchased all or any part of the said real estate from and with the said twenty thousand dollars, or the avails thereof, so received from said Burr Higgins, and they deny that the said Seth H. Mann, or Mary H. Mann, or either of them, pro-
46 cured the title of said lands, or any part thereof, to be conveyed to this defendant, Mary H. Mann, so that she could pretend to hold the same as her separate estate, and that this defendant, Seth H. Mann, would be thereby enabled to conceal from the complainant the ownership of said lands.

These defendants, further answering, admit that this defendant, S. H. Mann, as the agent of said Mary H. Mann, has caused the said lands to be improved, and has erected thereon a two-story wooden dwelling house, where these defendants now reside with their family; but they deny that said lands were paid for, or said improvements and buildings thereon, or any part thereof, made and erected thereon, with the said twenty thousand dollars, or the avails thereof so received by this defendant, Seth H. Mann, from said Burr Higgins.

And these defendants, further answering, deny that said Mary H. Mann has not received from any source whatever, other than this

defendant, Seth H. Mann, her husband, any property or estate whatever.

These defendants, the said Seth H. Mann, of his own knowledge, and said Mary H. Mann, upon information and belief, state and admit that since the 8th day of October, 1859, and particularly on or about the 1st day of February, 1860, the complainant, requested this defendant to pay over or account for the said twenty
47 thousand dollars so received from said Burr Higgins, the said complainant claiming and pretending that the same had been paid over to this defendant for and on account of the complainant, pursuant to the said contract first described in the complainant's bill of complaint ; and they admit that this defendant, Seth H. Mann, neglected and refused, and still neglects and refuses, to comply with such demand of the complainant.

But these defendants, answering as aforesaid, further state that at the time of making such request, nor at any other time, has the said complainant ever offered to assume or pay off the notes given by this defendant, and the other liabilities assumed by him as hereinbefore stated, or to cancel his indebtedness thereon, or in any way to indemnify him against loss or damage by reason of such liability, nor has the said complainant ever offered to indemnify him against his liability on his receipt so given to Burr Higgins at the time he received the said twenty thousand dollars.

These defendants, answering as aforesaid, further state that since these defendants removed to Beloit from Rock Island as aforesaid, and on or about the seventh day of August, 1856, the said
48 Burr Higgins, and J. H. Fonda, the cashier of the Manufacturers and Mechanics' Bank, called on the defendant, S. H. Mann, at Beloit aforesaid, with the said receipt in their possession, and demanded from him a return of the bills therein mentioned, or payment thereon in other money to the amount of twenty thousand dollars, and that since the said 7th day of August, 1856, he has been called upon by the agents of said Burr Higgins, and others, claiming to be entitled thereto as the owners of said receipt for the money therein referred to. That said receipt is still outstanding and existing, and is a personal liability against this defendant, S. H. Mann, and as these defendants are informed and believe, the same is still held and owned by the said Burr Higgins, or his assigns, and that the said complainant never had or held the same, and has no right, title, or interest therein, or claim thereto; that the said complainant has never assumed any liability for or on account of said twenty thousand dollars mentioned in the said receipt, and that this defendant, Seth H. Mann, has and holds no other or further security or indemnity against loss or damage by reason of his liabilities hereinbefore mentioned than the said twenty thousand dollars.

And these defendants, further answering, admit that they
49 now are, and for nearly thirty years have been husband and wife.

And these defendants, further answering, state that about the first day of September, 1852, the defendant, S. H. Mann, removed to

Rock Island, in the State of Illinois, and that during the month of November thereafter the said Mary H. Mann removed to Rock Island aforesaid; that at the time of such removal the defendant, Seth H. Mann, had no real estate, and but little, if any, personal property.

That at the time aforesaid the defendant, Mary H. Mann, was the equitable owner of lots number one and two, (1 and 2,) in block number eleven, (11,) in Beloit, according to a plot and survey made by John Hopkins; that the same, with the improvements thereon, was at that time worth about three thousand dollars, and that the same was subject to an incumbrance of six hundred dollars.

And that in addition thereto, the said Mary H. Mann then held money and securities for the payment of money in her own name, and in her own right, to the amount of four thousand dollars, or about that sum.

That on or about the 28th day of March, 1849, one Amos Holbrook, the brother of the defendant, Mary H. Mann, purchased of one
50 John G. Stockley, of Cleveland, in the State of Ohio, an undivided quarter part of a certain pier, and lots connected therewith, in Cleveland, Ohio, for the benefit of this defendant, Mary H. Mann, and on the same day said Amos Holbrook assigned all his interest therein to Luther Holbrook, the father of this defendant, Mary H. Mann, in trust for her own use and benefit; that no part of the purchase money of said pier and lots was ever paid in any way or manner, directly or indirectly, by this defendant, Seth H. Mann, nor was he ever in any way or manner beneficially interested in the same, or in the avails thereof.

That on or about the 30th day of November, 1850, the said Luther Holbrook sold and disposed of the property so held by him in trust, with the assent of this defendant, Mary H. Mann, to one H. Camp, of Cleveland, Ohio, for the sum of three thousand dollars over and above the amount assumed and agreed to be paid as the purchase price thereof by said Amos Holbrook, and over and above all other costs and expenses, and that said three thousand dollars was all paid over to this defendant, Mary H. Mann, about the first day of January, 1851, and that said sum of three thousand dollars, and the avails thereof, was a portion of the property held and owned
51 by her in her own right at the time she removed to Rock Island, as hereinbefore stated.

That about the month of July, 1846, one Ancel St. John furnished the capital stock and finances necessary to organize a certain bank in Cleveland, Ohio, called and known as the Canal Bank, and employed this defendant, Seth H. Mann, as its cashier, at a salary of fifteen hundred dollars a year; that about the year 1848, the charter and franchise of said bank was purchased by one Hewett, and the assets of said bank were purchased by the defendant, Mary H. Mann, from said Ancel St. John, for the sum of two thousand one hundred dollars; that all of said sum was derived from and paid out of the assets and property so purchased from said St. John, and the said Mary H. Mann had, in addition thereto, at the time she removed to Rock

Island, as aforesaid, realized about fourteen hundred dollars, and that after her removal to Rock Island she received some six hundred dollars, and that at the time of her removal to Rock Island, as aforesaid, the money so received and the avails thereof constituted a part of the money and property so held by her at the time she removed to Rock Island, as hereinbefore stated.

That on the second day of October, 1842, this defendant, Seth H. Mann, had become and then was indebted to Mrs. Eliza Dick-
52 inson, of the city of Syracuse, in the State of New York, in the sum of one thousand six hundred and eighteen and $\frac{65}{100}$ dollars for money before then received by this defendant, Seth H. Mann, out of the estate of James Mann, deceased, and which sum said Eliza Dickinson was then entitled to as an heir-at-law of the said James Mann. That in order to secure the payment thereof to the said Eliza Dickinson this defendant, Seth H. Mann, on said 2nd day of October, 1842, made and executed a sealed note, bearing date on that day, and delivered the same to said Eliza Dickinson, wherein and whereby, on demand for value received, he promised to pay to Mrs. Eliza Dickinson, or order, sixteen hundred eighteen and $\frac{65}{100}$ dollars, with interest semi-annually until paid.

That afterwards, and on the 21st day of March, 1851, the said note and interest was wholly unpaid and unsatisfied, and the said Eliza Dickinson, the payee therein named, being the owner and holder thereof, and entitled to the money due and payable thereon, by an instrument in writing, on the back of said note, signed by her, gave, assigned, transferred, and set over the said note unto Stephen A. Dennis, of the city of New York, in trust for the sole use and benefit of this defendant, Mary H. Mann, and that said note, with such assignment thereon endorsed, was delivered to said
53 Stephen A. Dennis by said Eliza Dickinson, in trust, however, for the use and benefit of this defendant, Mary H. Mann.

These defendants, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, further answering, state that at the time the said note was so assigned and transferred to said Stephen A. Dennis, the whole amount of principal and interest purporting to be due thereon was actually and equitably due and payable from this defendant, Seth H. Mann, to the said Eliza Dickinson, and that the said assignment was made by said Eliza Dickinson without any consideration being paid to her therefor by this defendant, Seth H. Mann, in any way or manner, directly or indirectly.

These defendants further answering state, that afterwards, and on or about the first day of April, 1851, the said note being then wholly unpaid and unsatisfied, this defendant, Seth H. Mann, paid over to said Stephen A. Dennis the amount due thereon and took up the said note; and the said Dennis soon thereafter, but at what precise time they are not now able to state, paid over the same to this defendant, Mary H. Mann, for her own use and benefit, and that at the time of her removal to Rock Island, as aforesaid, the proceeds of said
54 note, or some part of it, or the avails thereof, formed a por-

tion of the property then held and owned by her, as hereinbefore stated. And these defendants further answering state, that all the money and property above specified were so held and owned by the defendant, Mary H. Mann, in her own right, without any interest therein or claim thereon on the part of the defendant, Seth H. Mann.

These defendants further answering state, that the said Mary H. Mann, at the time of her marriage with the defendant, Seth H. Mann, held and owned personal property, consisting mostly of household furniture and wearing apparel, of the probable value of five or six hundred dollars, but the precise nature, description, amount and value thereof, these defendants are unable to state more particularly.

That these defendants were married at the village of Whitesboro', in the county of Oneida, in the State of New York, one of the United States of North America; that the marriage was solemnized by the Reverend John Frost, at the place aforesaid, on the 6th day of September, anno Domini 1830, and of American independence the fifty-fourth.

These defendants further answering state, that in addition to the sums of money above specified, after her removal to Rock
55 Island, she, the said Mary H. Mann, received five hundred dollars of stock dividend upon fifteen hundred dollars of capital stock owned by her in the Rock Island Bank.

That in addition thereto she received, while at Rock Island aforesaid, two thousand dollars, in cash, for dividens upon ten thousand dollars of stock in the Rock Island Bank, which was held in the name of Marcus B. Osborn, but for the use and benefit of this defendant, Mary H. Mann; that two thousand dollars of said stock had been issued in consideration of fifteen hundred dollars paid by her for fifteen shares of said stock out of her own money at the organization of said bank, and five hundred dollars of stock dividend thereon, as hereinbefore stated, and eight thousand dollars, or eighty shares of said stock, was purchased and paid for by said Marcus B. Osborn, but held by him for the benefit of this defendant, Mary H. Mann, subject to the payment of the sum of eight thousand dollars and interest, for money borrowed by said Osborn to pay for said stock.

That on or about the 9th day of August, 1856, this defendant, Mary H. Mann, received by gift from her son, James C. Mann, a deed of conveyance of fourteen and one-half acres of land in
56 the city of Beloit, Rock county, Wisconsin, upon which the house and buildings occupied by these defendants are situated, and that she still owns the same, and being the same premises first described in the complainant's bill of complaint; that said premises were purchased and paid for by said James C. Mann out of his own means, and that this defendant, Seth H. Mann, paid no part of the purchase money thereof, directly or indirectly.

These defendants further answering state, that said premises last described are subject to the lien nnd incumbrance of two mortgages made and executed by the defendant, Mary H. Mann, to Mrs. Chil-

lana O'Connor, for money borrowed, and upon which there is now due and unpaid the sum of four thousand dollars, or about that sum.

That this defendant, Mary H. Mann, also while at Rock Island as aforesaid, received about six hundred dollars for the rent of the house and premises described as lots one and two, in block eleven, in Beloit, according to Hopkins' survey, hereinbefore mentioned.

That since their removal to Beloit from Rock Island, as hereinbefore stated, this defendant, Mary H. Mann, has received about
57 ten thousand dollars of interest upon State stocks held by the bank controller of this State as security for the redemption of the circulating notes of the Oakwood Bank.

That the stock held by said Marcus B. Osborn, in the Rock Island Bank, for her benefit, was disposed of, and out of the avails a note given by said Osborn for money borrowed by him as aforesaid for the purpose of paying for eighty shares of said stock, was paid and satisfied, and the balance of the proceeds of said stock, together with forty shares in addition thereto, of the stock of the complainant, was invested in the Oakwood Bank, and the interest thus acquired in said bank is still held and owned by her.

That the said Mary H. Mann purchased the premises secondly described in said bill of complaint, and containing about thirty-two and one-half acres, on or about the first day of December, 1856, of one S. S. Johnson, for the sum of seven thousand dollars; that in payment of four thousand dollars thereof, she sold to said Johnson the said premises hereinbefore referred to as lots Nos. one and two, block eleven, in Beloit, according to Hopkins' survey; that she has since paid thereon the sum of about twelve hundred dollars, and that there still remains due upon the purchase money of said
58 premises, which is secured by mortgages thereon, the sum of twenty-four hundred dollars, or about that sum.

That the premises thirdly and fourthly described in said bill of complaint, and containing seven acres and four-fifths, were purchased by her for the sum of about seven hundred dollars, and paid by her in money of her own.

That the house erected on the premises mentioned in the complainant's bill of complaint, and therein described as "a large and elegant mansion," was erected at an expense of four thousand two hundred and fifty dollars or thereabout; that less than seventeen hundred dollars of said sum has been paid, and there still remains due and unpaid to different persons, for work, labor, and materials used and employed in and about the erection and construction of said house, the sum of twenty-six hundred dollars, or about that sum, and about one hundred dollars for interest thereon.

That this defendant, Mary H. Mann, has also erected a barn and other improvements on said premises, at an expense of about fifteen hundred dollars, as near as these defendants are now able to state, the whole of which has been paid by the defendant, Mary H.
59 Mann, in cash out of her own means.

These defendants further answering state, that no part of the said twenty thousand dollars so received by this defendant, Seth

H. Mann, from said Burr Higgins, or the avails thereof, have been used, employed, or expended in any way or manner in the purchase of said lands, or in the improvements made thereon. Nor has this defendant, Seth H. Mann, ever furnished, directly or indirectly, out of his own means, any money or property towards purchasing said lands, or making said improvements, or any part thereof.

These defendants further answering state, that all the lands embraced and described in the complainant's bill of complaint, which are owned by the defendant, Mary H. Mann, are agricultural lands, which are actually occupied by the defendant, Mary H. Mann, as a homestead, and include in all fifty-five acres, more or less, and that no part thereof are embraced or included in any town, city, or village plot;

And that this defendant, Mary H. Mann, claims to hold the same as a homestead, pursuant to the provisions of chapter one hundred and thirty-four of the revised statutes of the State of Wisconsin, excepting and reserving however fifteen acres of the premises described in said bill of complaint, which fifteen acres are described as follows: Bounded on the north by land owned and occupied
60 by Rufus Clark; on the west by land owned and occupied by William Rood; on the south by land owned and occupied by Archibald Ridell, and on the east by a line running parallel to the west line, and far enough therefrom to include fifteen acres of land.

These defendants further answering admit, that the complainant is a banking corporation, organized and doing business under the laws of the State of Illinois; that the defendant was elected and acted as its cashier, at a salary of fifteen hundred dollars per annum; that he entered upon the duties of cashier, and continued to discharge the same for the time and in the manner hereinbefore particularly stated and set forth.

These defendants further answering admit, that on or about the 8th day of August, 1855, he made and entered into a contract referred to in the complainant's bill of complaint, a true copy of which is hereto annexed, marked schedule No. 1, and that said contract was made and entered into by him, as is hereinbefore particularly stated.

These defendants further answering admit, that at the time said contract was made and entered into this defendant was the cashier of the complainant; that he made said contract in his indi-
61 vidual name, but for the benefit of the complainant; that the thirty-three thousand dollars therein mentioned was loaned and advanced by the complainant at the time and in the manner hereinbefore particularly mentioned and set forth.

These defendants, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, state that all the negotiations between this defendant, Seth H. Mann, and the said the Manufacturers and Mechanics' Bank, which resulted in said written contract, were not made and had between said bank and this defendant, Seth H. Mann, as cashier of the complainant; but they state and admit that said contract was made and entered into by him

in his individual name, and upon his individual account, but for the benefit of the complainant; but whether the said Manufacturers and Mechanics' Bank did not understand and know, and whether its officers and agents did not understand and believe and know, that said Seth H. Mann, entering into said contract, was acting in his character as cashier of the complainant, and for its benefit, and on its account, these defendants are not informed, and are therefore unable to state.

These defendants further answering, the said Seth H. Mann
62 of his own knowledge, and the said Mary H. Mann upon information and belief, state that about the month of August, 1854, this defendant, Seth H. Mann, did not, acting as the cashier of the complainant, and for and on its account, enter into and conclude a parol contract with the Manufacturers and Mechanics' Bank, a contract similar to the said written contract described in the complainant's bill of complaint, excepting that the complainant agreed to loan thirty thousand dollars instead of thirty three thousand dollars; and they further state, that at or about the time aforesaid, he made no other or different contract than the one hereinbefore particularly mentioned, as under the date of October 20, 1854, with the said M. B. Osborn; and they further state, in manner aforesaid, that this defendant, Seth H. Mann, did not, on his return to Rock Island, present to Marcus B. Osborn, the president of the complainant, a draft of contract reduced to writing, containing the substance of any parol agreement; and they further state, in manner aforesaid, that this defendant, Seth H. Mann, had not and did not receive from said Manufacturers and Mechanics' Bank, prior to the entering into said written contract, twenty thousand dollars in the bills of said Bank,
under any parol contract, or to hold until said contract should
63 be reduced to writing, and that he had not at the time said contract was reduced to writing and signed, received any of the bills of said bank upon any other agreement or understanding, or upon any other terms or conditions, than is hereinbefore particularly set forth; and that he then had advanced no money or funds to the said Manufacturers and Mechanics' Bank, except as is hereinbefore particularly stated and set forth.

These defendants, answering as aforesaid, further state, that said Manufacturers and Mechanics' Bank advanced in all, under said written contract of August 8, 1855, ninety thousand dollars; that twenty thousand dollars thereof was paid over to E. Lathrop, then one of the directors of the Rock Island Bank, on or about the 25th day of April, 1855, at Columbus, Georgia, after the terms of said contract had been substantially settled and agreed upon, as hereinbefore stated; that about twenty-eight thousand dollars, as near as these defendants are now able to state, were paid over to the defendant, S. H. Mann, in New York, at the time said contract was signed; and the balance of said ninety thousand dollars, being about forty-
two thousand dollars, was afterwards forwarded to Rock Island
64 by express, but at what precise time these defendants are not now able to state; that all of said sums, amounting to ninety

thousand dollars, were placed among the funds and money of the complainant as soon as the same were received at Rock Island.

These defendants, answering as aforesaid, further state, that said Manufacturers and Mechanics' Bank did not deliver under said contract in writing one hundred and twenty thousand dollars in its bank bills, nor any other or further sum than ninety thousand dollars, which was paid over at the times and in the manner hereinbefore particularly stated.

These defendants answering the twelfth interrogatory contained in said bill of complaint, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, state that immediately after the return of this defendant, Seth H. Mann, to Rock Island from New York, and in the early part of February, 1855, this defendant communicated to M. B. Osborn, the president of said complainant, and to E. Lathrop, then one of its directors, the fact that he had received said twenty thousand dollars from Burr Higgins, together with a full statement of all the transactions relating thereto between himself and said Burr Higgins and William B. Hotch-

65 kiss, and fully acquainted them with all the circumstances under which the same had been received by this defendant, and thereafter, the said Osborn and Lathrop well knew that this defendant claimed to hold the same as his individual property; that some months thereafter, and at some time during the winter of 1855 and 1856, and a long time previously to the time this defendant ceased to act as the cashier of the complainant, he communicated to the board of directors of said complainant, at a regular meeting of said board, the fact that he had received said twenty thousand dollars from said Burr Higgins, in the bills of said Manufacturers and Mechanics' Bank, and they were then held subject to his control; and he also communicated to said board fully and particularly a statement of all the facts and circumstances under which he had received the same, and also submitted to said board all the contracts, writings, and memoranda relating in any way thereto for its inspection and examination, and the same were submitted by said board of directors to George W. Pleasants, esq., the attorney of said complainant, and Hon. Ira O. Wilkinson, as counsel of said board; and the said board thereupon, with a full knowledge of all the facts and circumstances

66 relating thereto, and after an examination of all the contracts and papers connected therewith in the possession of this defendant, S. H. Mann, and with the knowledge that he then held and had under his control all of the said twenty thousand dollars so received by him from said Burr Higgins, and under the advice of their said attorney and counsel, unanimously decided and determined that the said complainant had no right, title, interest, or claim in or to the said twenty thousand dollars, or any part thereof.

And the said board of directors also at the same time, or at a meeting of said board held very soon thereafter, decided and determined to have the ninety thousand dollars of the bills of the Manufacturers and Mechanics' Bank which the complainant had received upon said contract as hereinbefore stated delivered over to William B. Hotch-

kiss, to be disposed of; and thereupon one of the directors of said board, at the request of said board, drew and prepared a contract by and between said Hotchkiss and this defendant, Seth H. Mann, and this defendant, Seth H. Mann, then being the cashier of the complainant, signed the said contract for and on behalf of said complainant by the direction of said board of directors, with said
67 William B. Hotchkiss, a copy of which contract is hereto annexed marked schedule No. 8, and which these defendants make a part of this their answer.

And these defendants answering as aforesaid further state, that at the same time this defendant, S. H. Mann, with the full knowledge and assent of the president and one or more of the directors of said board, in his own name, and for his own benefit, made and entered into another contract with said William B. Hotchkiss for the disposal of the said twenty thousand dollars which had been received as hereinbefore stated by him from said Burr Higgins, a copy of which contract, marked schedule No. 9, is hereto annexed, and which these defendants make a part of this their answer.

These defendants, further answering, as aforesaid state, and admit that this defendant caused notice to be published that the Rock Island Bank would receive the bills of the said Manufacturers and Mechanics' Bank, which should be used and paid out by said complainant, at the time and of the import hereinbefore stated, and in the manner hereinbefore set forth.

These defendants, further answering, state in manner aforesaid, that he, the said Seth H. Mann, did not dispose of the twenty
68 thousand dollars so received by him from said Burr Higgins, by paying it out at the counter of the complainant or by mingling it or any part of it with the other ninety thousand dollars of said bills, nor did he mingle it in any way or manner with any other money or funds belonging to the complainant.

These defendants, further answering, state that the said twenty thousand dollars so received by him, the said S. H. Mann, from said Burr Higgins, were used and disposed of by him as his own property.

These defendants, further answering as aforesaid, admit that this defendant, Seth H. Mann, received twenty thousand dollars from said Burr Higgins, at the time, and in the manner, and upon the terms and conditions hereinbefore particularly stated and set forth, and that he disposed of the same as his own property.

These defendants, further answering as aforesaid, state, that upon each and every of the bills so received by this defendant, S. H. Mann, from said Burr Higgins, there was a mark or marks by which such bill was distinguished and known, and each and every of the bills composing said twenty thousand dollars could be easily distin-
69 guished by such mark from the bills or either of them constituting the ninety thousand dollars paid over to the complainant as hereinafter stated.

And these defendants, further answering, state and admit that this defendant, Mary H. Mann, is seized in fee and holds in her own name

and right the four pieces of land first described in the complainant's bill of complaint, and which are therein believed to be correctly described, but subject to the encumbrances hereinbefore mentioned; that said premises were conveyed to her at the times and upon the consideration hereinbefore set forth, and the purchase price thereof paid, so far as the same has been paid as is hereinbefore particularly stated, and that she received the several sums of money paid therefor in the manner hereinbefore particularly specified.

And these defendants pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

S. H. MANN.
M. H. MANN.
S. J. TODD,
Solicitor for Defendants.
H. L. PALMER,
Of Counsel for Def'ts.

70 DISTRICT OF WISCONSIN, *County of Rock, ss*:

On this 31st day of July, A. D. 1860, before me came Seth H. Mann, and Mary H. Mann, who being by me duly severally sworn, each of them did depose and say that they had read the foregoing answer subscribed by them, and knew the contents thereof, and that the same was true of their own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters they believed it to be true.

W. C. SPALDING,
Commissioner.

71 *Schedule No.* 1.

This agreement, made the eight day of August, A. D. 1855, by and between Seth H. Mann, of Rock Island, and State of Illinois, the party of the first part, and "The Manufacturers and Mechanics' Bank of Columbus, Georgia" of the second part, witnesseth: That said first party hereby covenants and agrees, in consideration of the undertakings and stipulations of said second party hereinafter recited, to be kept and performed, to loan to the said second party the sum of thirty-three thousand dollars, the receipt whereof is hereby acknowledged for the term of four years from the 15th day of October next and for one year thereafter, if this contract shall not be sooner closed and settled, without interest.

The said second party hereby covenants and agrees, in consideration of the loan above mentioned, to furnish, and on or before the first day of October next to deliver to the order of said first party, his heirs or assigns, to his or their agent in the city of New York, circulating bills or notes of the "Manufacturers and Mechanics' Bank"
of Columbus, Georgia, to the amount of one hundred and ten
72 thousand dollars, the same to remain without interest for the
term of four years from said 15th day of October next, and for one year thereafter, also without interest during which last-men-

tioned year this contract is expected to be closed, so that the business shall be settled up as nearly as possible within five years from said 15th day of October, 1855.

The said first party hereby further agrees, upon receiving the entire amount of said issues herein agreed to be delivered to him, to provide and deliver to the said second party his paper, based upon this contract, and made to represent said loan of issues in part in said bank in the form of notes, bills of exchange, and sight drafts on his correspondent in the city of New York, to an amount not exceeding seventy-seven thousand dollars, the said sight drafts to be used only to redeem said issues when presented at the bank in Columbus for redemption, and for no other purpose whatsoever. The issues so redeemed are to be returned to the agent of said first party in New York upon presentation of any said drafts, and the amount
73 of the sight draft or drafts so used in their redemption are to be replaced by other similar draft or drafts, to be sent to the bank in Columbus so as to keep the amount good.

The said first party hereby further agrees to protect said issues received by him under this contract in such manner as to prevent, if possible, their coming home to Columbus for redemption, by receiving the same on deposit or in payment for exchange or coin at the counter of Rock Island Bank, and by providing further redemption at such western points as may be deemed necessary by said first party to secure a good and profitable circulation at rates current for the notes of Kentucky and Virginia banks; and also in the city of New York at the same rate that said bank redeems its other issues in that city.

It is hereby jointly agreed that the circulating notes furnished to said first party shall be from the plate of four-fives engraved by Danforth, Wright, & Co. for said second party, and the impressions from said plate shall not be issued for any other purpose during the continuance of this contract. Whenever any of the said notes
74 shall become mutilated they may be returned to the agent of said second party or sent to the agent of the said first party in the city of New York, and new ones of like amount shall be issued and sent to one of said agents in New York, and be delivered to the agent of said first party in exchange for said mutilated notes. The said second party is also within thirty days to remit to New York to the agent of Rock Island Bank an amount sufficient to reimburse said bank on account of its payments towards engraving said plate and printing therefrom.

It is also hereby agreed jointly, that at the expiration of the term for which this contract is made, (being the 15th day of October, 1860,) the said first party shall pay to said second party or to its agent in New York a sum equal to the difference between the loan first above mentioned and the one hundred and ten thousand dollars of issues aforesaid, (provided all of said issues shall have been delivered as herein agreed, but not otherwise,) leaving the balance of said issues after that time to be redeemed by said second party, which said balance said second party hereby agrees to redeem and

to protect from loss or damage; said first party and Rock Island
75 Bank, on account of having paid out said issues, and agreeing to receive them from the public. The said sum may be paid in the issues of said second party, or in any other funds of equal value, and upon the payment of such sum or balance by said first party, his heirs or assigns, the said second party hereby agrees to return and deliver up to said first party all and every of said notes, bills of exchange, and sight drafts which may previously have been delivered to said second party, and not before returned to said first party.

The said first party further agrees to have Rock Island Bank guarantee the fulfilment of this contract on the part of said first party, and also to endorse his notes and bills of exchange aforesaid.

Witness the hand and seal of the party of the first part, and the hands and seals of the president and cashier of the party of the second part, the day and year above written.

[SEAL.] S. H. MANN,
[SEAL.] E. T. TAYLOR,
Pres't M. M. B'k.
[SEAL.] J. H. FONDA,
Cash. M. & M. B'k.

In presence of, as to the signature of S. H. Mann and E. T. Taylor—

C. H. MANN,
W. C. MANN.

For J. H. Fonda,
T. R. MATTHEWS.

76 *Schedule No. 2.*

For and in consideration of one dollar in hand paid to the "Manufacturers and Mechanics' Bank of Columbia," in the State of Georgia, the receipt whereof is hereby acknowledged, the said bank hereby proposes and agrees to furnish to Marcus B. Osborn, of Rock Island, Illinois, one hundred and fifty thousand dollars in its circulating notes of the denomination of five dollars, (or any other not under five that may be preferred,) for a period of six years, or until the first day of January, 1861, for purpose of circulation, which circulation is to be protected and redeemed by said Osborn in New York city during said time, at the same rate that the bank protects and redeems its other issues in the city of New York, and to protect at such other points as may be deemed necessary by said Osborn, to secure a good circulation.

If during said time any of the circulating notes furnished to said Osborn should be returned or presented for redemption at the counter of the said bank, or be redeemed through any of its agencies, all such notes are to be remitted to the agency of said Osborn in the
77 city of New York for redemption as above provided, and a failure at any time to take up and redeem, on demand, during

the usual bank hours, any of such circulating notes in the manner aforesaid shall be deemed a forfeiture of this agreement, giving the bank a right to demand its discontinuance and settlement. The said Osborn is to pay interest at and after the rate of four per cent. per annum, semi-annually, on the first days of January and July in each year, or as soon thereafter as the calculations can conveniently be made on the average circulation, which may be obtained or maintained by taking the amount in circulation every Saturday, and average at the expiration of every six months as aforesaid.

The said Osborn desires to have a plate of two five-dollar notes engraved by Danforth, Wright & Co., so that the notes may be at once distinguished from the ordinary issues of said bank, which notes are to be for the exclusive use of said Osborn during the time this contract shall be in force.

The plate and all notes printed over said $150,000 to remain in the hands of Danforth, Wright, & Co., and after the first 17,000 impressions are printed, no more are to be printed from said
78 plate except by the joint order on said bank and said Osborn, or by said Osborn's attorney hereinafter mentioned. The $150,000 to be, however, kept up by an exchange of new issue from said plate for all worn out, badly soiled, or mutilated notes returned to the agency of said bank in the city of New York by said Osborn for that purpose.

The expenses of plate, printing, &c., to be equally divided between the parties.

The notes to be signed, prepared, and delivered to the agency of said Osborn in the city of New York with the least possible delay, in packages under seal.

If, on or before the 1st day of January, 1861, the said bank should decline to continue this contract and the arrangement under it for a further similar term of years, then said bank is to repay to said Osborn, his heirs or assigns, the said cost of "engraving, printing, &c.," which shall have been paid by him, but without interest.

And it is further agreed that said circulating notes shall be delivered to Seth H. Mann, as attorney and agent of said Osborn,
79 and the custody, control, and management of the same and proceeds thereof shall be and remain with said Mann as said Osborn's attorney and agent aforesaid during the continuance of this contract and the arrangements under it, and whenever such "custody, controll, and management" shall be discontinued by said Mann, either by his own or said Osborn's act, then said bank shall have the right to annul this contract so far as to require its immediate close and settlement.

And when this contract shall be terminated, and a settlement, thereof made, the said bank shall and will at all times receive in payment the notes of said bank or other funds of equal value, which the said Osborn, his heirs or assigns, may at any time offer in payment thereof.

And the said Marcus B. Osborn, by S. H. Mann, his attorney, hereby accepts the terms set forth in this contract, and hereby promises

and agree to carry out faithfully and fulfil the stipulations set forth to be kept and fulfilled by him.

Witness our hands and seals at the city of New York, this 20th day of October, 1854.

[SEAL.] (Signed) A. W. RANSOM, *Pres't*,
[SEAL.] W. B. STORM, *Cash.*,
Pres't and Cash. of the Manufacturers and Mechanics' Bank of Columbia, Ga.
[SEAL.] M. B. OSBORN,
By S. H. MANN, *His Att'y*.

80 In addition to the foregoing it is further agreed, that for the purpose of providing for the redemption of any of said issues that may be presented at the counter of said bank for redemption, in amounts of $1,000 or more, the said Osborn agrees to furnish bank drafts of the Rock Island or some other solvent bank on New York to the amount of twenty-five thousand dollars, pro rata, as said bills are delivered, payable to the order of said bank upon the return and delivery to the agency of said Osborn, in New York, of an equal amount of said bank notes so put in circulation by said Osborn; none of said drafts to be used, however, except in cases where said issues are taken to the bank, and their redemption demanded; none in any case whatever after said bank shall fail to redeem its other issues at it counter and in New York.

The amount of such drafts to be kept up so long as said bank redeems its other issues as aforesaid, that is, after one or more of said drafts shall have been paid as above provided, and the bills delivered to said Osborn, agent in New York; then an equal amount to be again forwarded in due course of mail.

81 [SEAL.] (Signed) A. W. RANSOM,
President.
[SEAL.] W. B. STORM,
Cashier.
[SEAL.] M. B. OSBORN,
By S. H. MANN,
His Attorney.

For one dollar value received, the Rock Island Bank of the State of Illinois hereby guarantees the fulfilment of the above contract on the part of M. B. Osborn.

(Signed) S. H. MANN, *Cash'r.*

82 *Schedule No.* 3.

This agreement, made this thirteenth day of January, A. D. one thousand eight hundred and fifty-five, by and between Burr Higgins, of Jamaica, L. I., New York, and Seth H. Mann, of Rock Island, State of Illinois, and Wm. B. Hotchkiss, of the city, county and State of New York,

Witnesseth: That whereas said Higgins entered into and made a contract with William H. Hunt, of Columbia, Georgia, dated the sixth

day of January, 1855, for the purchase of all the stock subscribed for in the "Manufacturers and Mechanics' Bank" of Columbus, Georgia, together with its charter privileges and franchises, (except thirty shares each in the name of Terry, Storm, Woodruff, and Ransome, directors thereof,) and stipulated and agreed to pay for said stock the sum of thirty thousand dollars, as stated therein, and also further agreed to pay and surrender certain notes of indebtedness made by said Hunt and W. B. Storm; also a debt due the Rock Island Bank, a copy of which contract is hereto attached and made a part of this agreement:

Now, therefore, said Higgins, in consideration of the under-
83 taking and obligations hereinafter mentioned and specified and of the fullfilment thereof, hereby agrees to sell, release and make over, and does sell, release and make over to the said Seth H. Mann, for himself, his assigns or legal representatives forever, three-fifths (3-5) of all his interest in the said purchase of stock, together with three-fifths (3-5) of all the rights, benefits and privileges of the charter under which said stock was created.

And the said Mann hereby agrees in behalf of himself, his heirs and assigns, or legal representatives, to assume and pay three-fifths (3-5) of said purchase money of thirty thousand dollars ($30,000) agreable to the stipulations of the said contract (hereto annexed) or as the parties hereto shall hereafter agree; and also to pay and satisfy three-fifths of the paper given by said Storm and said Hunt, in payment for the capital stock of said bank, and also three-fifths of the debt due the Rock Island Bank.

Said Higgins hereby further agrees to sell and assign to said William B. Hotchkiss one-fifth of said purchase of stock, together with
one-fifth (1-5) of all the rights, benefits and privileges of the
84 charter under which said stock was credited, and the said Hotchkiss hereby agrees, and binds himself, his heirs and assigns, or legal representatives, to assume and pay one-fifth of said purchase money of thirty thousand dollars agreeable to the stipulations of the said contract (hereto annexed) or as the parties hereto shall hereafter agree, and also to pay and satisfy one-fifth of the paper given by said Storm and said Hunt in payment for the capital stock of said bank, and also one-fifth of the debt due the Rock Island Bank.

Said Higgins further agrees to make transfers of said stock (when he shall receive the transfer thereof from the said Hunt) according to the several interest herein specified viz: three-fifths to said Seth H. Mann, and one-fifth to Wm. B. Hotchkiss or to their heirs or assigns, reserving one-fifth part of the same to himself.

The stock herein referred to being one-half of what the charter privileges authorize.

It is hereby further understood and agreed, that the remaining stock to be subscribed for, to fill the capital to a half million of dol-
lars, ($500,000,) shall be divided, taken and controlled in like
85 proportion with the aforementioned, viz: Seth H. Mann, his heirs or assigns, three-fifths, Wm. B. Hotchkiss, his heirs or assigns, one-fifth, and Burr Higgins, his heirs or assigns, one-fifth.

And it is further agreed, that articles of association shall hereafter be drawn up and entered into by the parties to this agreement, to be called by-laws of stockholders, fixing and setting off territories for each party in interest, to occupy exclusively, or jointly, for circulation of bills, and also general rules for the redemption of said bills, and for holding, owning or disposing of said stock interests.

(Signed) BURR HIGGINS.
S. H. MANN.
WM. B. HOTCHKISS.

In presence of—
S. B. HIGGINS.

86 *Schedule No. 4.*

It is hereby agreed by and between the parties hereto that the following shall be and constitute a part of the by-laws of the "Manufacturers and Mechanics' Bank" of Columbus, Georgia.

The parties hereto do hereby, jointly and severally, agree that the territory which shall be occupied for circulating the bills or issues of said bank shall be set apart, and shall be strictly adhered to as follows, viz:

The boundary set apart for the exclusive use of the three-fifths to be assigned to said Mann, and his associates or assigns shall be bounded as follows, to wit: commencing at the northwest corner of the State of Pennsylvania, in Lake Erie, and running thence (along the west side of the State) south to its intersection with the Ohio river; thence along the channel of said river to Cairo, in Illinois; thence in a northerly direction along the Mississippi river to Saint Louis, in Missouri; thence westwardly from St. Louis to St. Charles, on the Missouri river; thence up the Missouri river to its
87 head waters, embracing the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, Iowa and North Missouri, with all the territory north and west of them to the Canada line, except for a specified amount to be agreed upon between said Mann and said Hotchkiss to be used jointly in northwest Ohio and in St. Louis, and St. Clair county, in the State of Illinois.

The boundary set apart for the exclusive use and benefit of two-fifths interest shall be comprised in the States of Tennessee, North and South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, Arkansas, Texas, Southern Missouri and all the territory west of these last-named States, and all the other terrritory and States not herein named are to be jointly occupied by the parties hereto.

Each party in interest agrees to observe in strict good faith and fair dealing to the others the division of territory thus described, and that each will carefully adhere to the limits or bounds of the territory thus allotted, without trespass or undue advantage; and it is
88 expected of each party that he will take up at rates current for his own any circulation in his prescribed limits or boundary which belongs to either of the other parts or parties, and to return the same to the nearest point of redemption known to said party

for redemption or exchange for his own. Each party shall arrange to redeem in New York city, and at such other points as he or they may deem necessary for his or their interest, in order to protect the credit and redemption of said notes. Therefore said Mann and his associates or assigns shall provide for the redemption of such notes or bills as he or they may or shall circulate in his or their own territory or otherwise, a sufficient fund in New York city, and also at all concentrating points and places of business in his or their territories, which he or they may deem for their interest so to provide. So also and in like manner said Hotchkiss shall do and provide in relation to and for the notes and bills he circulates. And said Higgins shall in like manner do and provide for and in relation to the notes and bills he shall circulate. If either party shall
89 fail to redeem his or their own circulation which the other party or parties may have or hold at any period of time, on a balance due longer than (30) thirty days, or fail to take up said bills which rightfully belong to his portion or to that circulated by him, at his place of redemption in New York city, and suffers the same to be returned to the bank without satisfactory arrangements having been made to redeem the same at the bank, in such cases then he or they shall forfeit all of his or their claim or claims to circulate any notes or bills outside of the bank; and in future thereafter, in so far as relates to his or their privileges to use circulating notes of the bank, it shall thereafter belong to the stockholders in common and be used from the bank direct.

Neither party shall be entitled to receive any circulation or issues from the bank upon his or their share or shares of stock until he or they shall make (or cause to be made) payment in money upon his stock or theirs, as prescribed in the charter; which payment, be it more or less, will entitle the party making it to his or their
90 share of the bills or circulating notes of the bank, as provided for in said charter.

And neither party hereto, or their associates or assigns, shall do any act which can be construed into a known or open violation of any or all the provisions of the charter, by which or under which it was organized; but, on the contrary, shall in every case comply fully therewith.

Each party or parties shall give to the bank a receipt for the circulating notes which he or they receive or shall receive under this arrangement from the said bank, and he or they shall pledge his or their stock as security and make such other and further provision as will protect and insure the redemption thereof as herein provided.

Circulating notes to be used by and set apart for said Mann, and his associates or assigns, shall be printed from the plate which he designed, and which was engraved by Danforth, Wright & Co., of New York city, and from such other plates as it may be necessary hereafter for the bank to order for their use. And the circulating notes to be set apart for the use of the two-fifths interest of
91 said Hotchkiss and said Higgins shall be those printed from the plates engraved by the house of Rawden, Wright, Hatch

& Edson, so as that they may be easily distinguished from each other in regard to redemption. Each party shall weekly on the last of every week, or if accidentally or necessarily omitted, then, as soon thereafter as possible, state by letter addressed to the bank postpaid the sum of circulating on hand and unused, in order thereby to enable the cashier to make a general statement.

Monthly balance sheets showing the condition of the bank, together with a statement of each parties' circulation and fund to redeem, shall be exchanged by the bank and the parties hereto.

Each party hereto shall pay to the bank in the circulating notes which he or they shall use and actually have in circulation, on an average as shall appear by estimate at the end of each week, four per cent. interest per annum, on the first Monday in June, and in December, semi-annually.

The circulating notes used at and from the bank, necessarily taken from any one party's interest, shall be reported and stated at
92 the end of each week, and the party or parties to whom they rightfully belong shall be credited by the bank at the rate of four per cent. per annum known to be paid to said party or parties in the months of June and December as aforementioned, each year. The bank to redeem such notes or bills so used with its own funds in (the) bank. Neither party shall be at liberty to hypothecate any of the circulating bills of the bank (which may at any time be in his hands) for any purpose whatever; such hypothecation shall be deemed an open violation of the agreement contained in these by-laws, regarding circulation, except in rare cases where it may become necessary to hypothecate bills for a limited time to secure a prompt redemption of the notes of said bank.

The party or parties receiving such circulation notes shall hold them as the property of the bank, as agent-stockholder when the same are not in circulation.

Of the capital stock paid in by the parties hereto there shall always be kept on hand, in legal coin, at the bank, to protect redemptions thereat, five per cent. as nearly as may be of the average
93 circulation maintained by the party or parties hereto, and the capital, so far as any party in interest who may have furnished it, may desire it, shall be kept at the agency in New York city, under the control of said party or parties to protect redemption of said bills in that city, and whenever said funds in New York, or in Columbus, or any part thereof shall be used in redemption of said bills, the party or parties for whom such redemption or any part thereof was made shall with all reasonable despatch pay into said agency or bank the amount so used on his behalf, so that the actual fund paid in as capital stock shall as nearly as may be always be kept on hand.

Any first-rate securities convertable into cash on demand in New York city, in the hands of the agent of the bank and of the party or parties, shall be considered the same as cash on hand.

These by-laws may be altered or amended by a vote of three-fifths of the parties in interest at a future meeting of stockholders, in per-

son or by proxy, which may be convened after sixty days' no-
94 tice thereof has been given, either by publication either in the gazettes of Columbus, Georgia, or by written or printed notice, sent to every stockholder by mail postpaid addressed to each of said stockholders at his reputed place of business; provided, however, that such alterations or amendments may be made at any meeting of stockholders convened at any time by mutual consent (to such meeting) in writing, if four-fifths of the parties in interest.

Bur Higgins shall be the president of said bank and the financial officer thereof, with a salary from the time he shall enter upon and continue to discharge the duties of the office of twenty-five hundred dollars per annum, payable quarterly, on the first days of January, April, July and October, the amount to be increased to three thousand dollars per annum as soon as the extent and prosperity of the business of the bank shall warrant such increase.

(Signed) BURR HIGGINS.
" S. H. MANN.
" WM. B. HOTCHKISS.

95 *Schedule No. 5.*

Received, New York, January 22, 1855, from Burr Higgins, a package of the circulating notes of 1,000 sheets 5, 5, 5, 5, or $20,000, signed by the cashier and president of the Manufacturers and Mechanics' Bank of Columbus, Ga., for safe keeping; and as collateral for the package of the notes of said bank for thirty-eight thousand dollars given to said Higgins on his receipt to collect therefrom thirty thousand dollars and interest or return; and when so collected or returned, I will return to him, or account for the value of the same, the package hereby receipted.

(Signed) S. H. MANN.

96 *Schedule No. 6.*

Whereas Burr Higgins, late of Jamaica, New York, has purchased about twenty-five hundred shares of the capital stock of the Manufacturers and Mechanics' Bank of Columbus, Georgia, of William H. Hunt, esq., of said Columbus;

And whereas said Higgins has gone to said Columbus and taken possession of said stock, which said stock is, by articles of agreement between said Higgins and Wm. B. Hotchkiss, now of St. Louis, Mo., and the undersigned S. H. Mann, divided into five shares of fifty thousand dollars each, of which said shares two are owned and controlled by said Higgins and said Hotchkiss, and the remaining three shares are set off to and controlled by said S. H. Mann, his associates or assigns, as set forth in the by-laws agreed upon between the parties:

Now, therefore, in consideration of six thousand dollars to said Mann in hand paid, the receipt whereof is hereby acknowledged, and also of certain things hereinafter mentioned to be done by Charles A. Wheaton, of Syracuse, N. Y. I, the said S. H. Mann, do hereby

sell, assign, transfer, and set over unto said Wheaton one share of fifty thousand dollars of said stock, subject to such payments
97 as are required by the charter of said bank or unpaid stock. The said Wheaton agrees on his part not only to conform to the requirements of the charter of said bank, but also to put into circulation the bills issued upon one additional share of fifty thousand dollars of said stock upon the line of the Blue Ridge Railroad Company, running from Anderson, South Carolina, to Knoxville, Tennessee, for and on behalf of said Mann or his assigns, which said bills are to be paid for by the note or notes of Ausburn, Birdsall & Co., and endorsed by said Charles A. Wheaton, and payable at the American Exchange Bank in New York, at three months after the date of delivery of any of said notes without interest, which arrangement to circulate notes for said Mann is to be continued one year from the time seventy-five thousand dollars ($75,000) of said issues shall have been paid out for and on behalf of said Mann or his assigns.

Dated Syracuse, March 13, 1855.

(Signed) S. H. MANN.
CHARLES A. WHEATON.

98 *Schedule No. 7.*

Whereas Burr Higgins, W. B. Hotchkiss and S. H. Mann, did, in January, 1855, in the city of New York, enter into a certain arrangement in regard to the use of the issues or notes of circulation of the Manufacturers and Mechanics' Bank of Columbus, Georgia, which said arrangement was reduced to writing and called "By-Laws of Stockholders;" and whereas the said S. H. Mann, the owner of the three-fifths interest mentioned in said by-laws, has sold to Charles A. Wheaton, esq'r, of Syracuse, N. Y., five hundred shares of said capital stock, or one-fifth interest; and as said Wheaton is interested in a contract for building a railroad running from Anderson, S. C., to Knoxville, Tenn., and may be hereafter interested in similar contracts elsewhere, it is important and desirable that said Wheaton should be permitted to pay out the kind of issues of said bank which he may receive on his share upon the line of said railroad or elsewhere in the southern States:

Now, therefore, in consideration of the above facts, it is hereby agreed by four-fifths of the parties in interest that said
99 Wheaton and the company with which he is connected may freely pay out such issues upon the line of said road or elsewhere.

And further, the said parties in interest hereby agree to so alter said by-laws when they place the capital stock paid in by any stockholder under the control of such stockholder, as to leave such capital under the control of the bank, but to be so managed by said bank as to keep the institution strong in New York city, and the funds applicable to redemption in said city of the notes of said bank.

New York, March 27, 1855.

(Signed) BURR HIGGINS.
S. H. MANN.

100 *Schedule No. 8.*

This memorandum of agreement made this 20th day of February, 1856, between Seth H. Mann, of Rock Island, Illinois, and Wm. B. Hotchkiss, of Saint Louis, Missouri, witnesseth:

That the said parties, for value received by each from the other, have entered into the following agreements and undertakings, to wit: The said Seth H. Mann has this day loaned to said Hotchkiss the sum of eight thousand dollars in the circulating bills of the Manufacturers and Mechanics' Bank of Columbus, Ga., for which money the said Hotchkiss has given the note of "The Saint Clair Railroad and Coal Company," of Illinois, endorsed by himself, dated Feb'y 19, 1856, at three months, payable at the Rock Island Bank for the same amount, with ten first mortgage coupon bonds of said company as collateral to said note.

And it is agreed by and between said parties that whenever (during the time said paper has to run) said Hotchkiss shall pay or deliver to said Mann sums of money or satisfactory paper for any amount not exceeding in the aggregate forty thousand dollars, he shall receive for the same an equal amount of said circulating
101 bills; and when said Hotchkiss shall have so delivered said money and paper to said Mann to an amount not less than thirty-three thousand dollars, (exclusive of all redemptions of the bills so paid out,) and received the said circulating bills therefor, the said Mann shall then deliver to said Hotchkiss on demand a still further amount of said circulating bills, sufficient to make up the sum of ninety thousand dollars in all, and shall also deliver up to said Hotchkiss said note for eight thousand dollars, ($8,000,) and the aforesaid ten bonds given as collateral.

The said Hotchkiss further agrees that in case he can use the amount of thirty-three thousand dollars ($33,000) as aforesaid, he, with the Saint Clair Railroad and Coal Company, will guarantee the Rock Island Bank against any loss whatever in consequence of said bank guaranteeing the fulfillment of a contract between said Mann and said Manufacturers and Mechanics' Bank of Columbus, Ga., on the part of said Mann, which said contract bears the date of August 8, 1855.

And said Hotchkiss further agrees that he will make all practicable efforts with said Manufacturers and Mechanics' Bank to pro-
102 cure the release of the aforesaid guarantee of said Rock Island Bank on said certificate, by offering to assume on the part of himself and said coal company the said guarantee.

And said Hotchkiss further agrees to protect said Mann from its liability on the said contract, or from any loss by reason thereof, and to carry out all its provisions with said Manufacturers and Mechanics' Bank on the part and behalf of said Mann, and at its termination to pay said bank as therein provided, to the amount of ninety thousand dollars, ($90,000.)

And it is further mutually agreed that if said Hotchkiss shall find he cannot use said Georgia money, or that he cannot use the amount

of forty thousand dollars ($40,000) in a proper way, he may, at any time, after making the trial, return to said Mann the amount of said note of eight thousand dollars ($8,000) in the circulating bills aforesaid, if done within three months of this date, and receive the said note and ten bonds in exchange for the same, and that then this agreement shall cease and be cancelled.

It is also understood and agreed that as ninety thousand dollars ($90,000) is all that has been paid on the contract of August
103 8, 1855 aforesaid, by said Manufacturers and Mechanics' Bank, the said Hotchkiss and coal company are only to account for that sum, from which is to be deducted the thirty-three thousand dollars ($33,000) loaned to said Manufacturers and Mechanics' Bank, as in said contract mentioned.

Witness our hands the day and year first above written.

(Signed) S. H. MANN.
WM. B. HOTCHKISS,
Pr. EDW'D M. MORGAN, *Att'y.*

In presence of—
(Signed) E. LATHROP.

104 *Schedule No. 9.*

Having this day entered into a contract with Seth H. Mann, of Rock Island, Ill., by which I have agreed to assume his liability on a contract between him and the Manufacturers and Mechanics' Bank of Columbus, Ga., I do hereby, in consideration thereof, and of one dollar to me in hand paid by said Mann, agree that I will circulate and protect for said Mann, his heirs or assigns, the sum of twenty thousand dollars of the notes of the Manufacturers and Mechanic's Bank of Columbus, Ga., until the 15th day of October, 1860.

Dated Rock Island, 20th Feb'y, 1856.

(Signed) WM. B. HOTCHKISS,
Pr. EDW'D M. MORGAN, *Att'y.*

In presence of—
(Signed) E. LATHROP.

AUGUST 25, 1860.

This day came the complainants, by its solicitor, and filed its replication to the answer as follows:

105 District Court of the United States for the district of Wisconsin.

Replication.

THE ROCK ISLAND BANK
vs.
SETH H. MANN & MARY H. MANN. } In equity.

The replication of the Rock Island Bank, complainant, to the answer of Seth H. Mann & Mary H. Mann, defendants.

This repliant, saving and reserving to itself all and all manner of

advantage of exceptions to the manifold insufficiencies of the said answer for replication thereunto saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

N. C. GRIDLEY,
Compl't's Sol'r.

And at a stated term of said District Court, begun and held on the first Monday (being the seventh day) of January, A. D. 1861, and on the nineteenth day thereof, to wit, on the thirteenth day of February, A. D. 1861, the following proceedings were had, to wit:

Order of court allowing amended bill to be filed.

THE ROCK ISLAND BANK
vs.
SETH H. MANN & MARY H. MANN. } In equity.

106 This day came the complainant's counsel, and by leave of the court (a petition for that purpose being waived by defendant's counsel) filed an amended bill, and on his motion it is ordered by the court that the defendants plead, answer, or demur to said amended bill by the first Monday of March next, or the same will be taken as confessed.

Which amended bill is as follows:

In District Court of the United States for the district of Wisconsin.

Amended bill.

ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN. } In equity.

The complainant, by leave of the court first had and obtained, amends its bill of complaint in this cause as follows, viz:

After the words "To the judge of the District Court of the United States for the district of Wisconsin, in equity," strike out all the remainder of said bill of complaint, and insert as follows, viz:

Humbly complaining unto your honor, your orator, the Rock Island Bank, a corporation organized and existing under and by virtue of the laws of the State of Illinois, complains of Seth H. Mann, Mary H. Mann, wife of said Seth, of Beloit, in said State of Wisconsin,

citizens of the State of Wisconsin, and thereupon your orator complains and says:

1. That previous to the 1st day of January, A. D. 1852, your orator was, ever since has been, and now is, a banking corporation, organized and doing business under the general banking law, so called, of the State of Illinois; and that about the first day of July, or the 1st day of August, A. D. 1852, the board of directors
107 of your orator elected said Seth H. Mann, one of said defendants, cashier of your orator; that at the time of said election the said Seth H. & Mary H., defendants, resided in the city of Beloit, in the State of Wisconsin; and that said Seth, then, or about that time, accepted said election and appointment; and about the 1st day of September, A. D. 1852, the said Seth & Mary removed to Rock Island, in the State of Illinois, and the said Seth entered upon the discharge of his duties as cashier of your orator, and thereafter, and until about the 10th day of June, A. D. 1856, the said Seth continued to be the cashier of your orator at an annual salary, and had the principal management and control and the actual direction of all the business of your orator.

2. Your orator further shows that about the month of October, A. D. 1854, the said Seth, being cashier of your orator, negotiated in the city of New York, with the Manufacturers & Mechanics' Bank of Columbus, Georgia, a banking corporation existing and doing business under and by virtue of the laws of the State of Georgia, a certain contract in the name of Marcus B. Osborn, then president of your orator, but for the benefit and advantage of your orator, which said contract was partly written and partly in parol, the written part of which is hereto attached, and marked Exhibit No. 1, and that in consideration of said written agreement your orator should loan to said Manufacturers & Mechanics' Bank the sum of thirty thousand dollars for forty-five and sixty days; and that said agreements, though so far as the written agreement was concerned it was in the name of said Osborn, yet were made for the benefit and on account of your orator, and accordingly the said Seth soon after delivered to said Manufacturers & Mechanics' Bank thirty thousand dollars in money, of the money or funds of your orator, and took from said Manufacturers & Mechanics' Bank therefor three drafts payable in forty-five and sixty day, amounting in all to the sum of thirty thousand dollars; and that the said Seth then and there also received from said Manufacturers & Mechanics' Bank as collateral security to said drafts the bank bills of said last-named bank to the amount of thirty-
108 eight thousand dollars, in denominations of twenties, fifties, and one hundreds; all of which said drafts and said thirty-eight thousand dollars in said bills, he, the said Seth, received as cashier of your orator, and for your orator's benefit; and your orator avers that said drafts and said thirty-eight thousand dollars in said bills became, when so received by said Seth, the drafts and collateral security of your orator; and it then and there, and was the duty of said Seth to then and there pass the same over to your orator, or to hold the same for your orator's benefits, the same having been

ceived by said Seth only to evidence the loan, and secure the repayment of said thirty thousand dollars so loaned by your orator to said Manufacturers & Mechanics' Bank, as before stated.

3. That about the month of January, A. D. 1855, the said Manufacturers & Mechanics' Bank, not having fulfilled its said written agreement, a copy of which is Exhibit No. 1 to this bill, and not having repaid to your orator said thirty thousand dollars so loaned by your orator as aforesaid, and the said Osborn not being satisfied with the contract Exhibit No. 1, and not wishing to have the same remain in his individual name, the said Seth, cashier as aforesaid, went to New York to look after the interests of your orator in the premises, and to obtain payment or security for the said thirty thousand dollars so loaned by your orator to the said Manufacturers & Mechanics' Bank; and that in the city of New York about the 22d day of January, A. D. 1855, the said Manufacturers & Mechanics' Bank took back from said Seth said thirty-eight thousand dollars in the bills of said last-named bank, and gave and delivered to him in the place and stead thereof twenty thousand dollars in the bills of said last-named bank, being 1,000 sheets of four five dollar bills upon each sheet, printed from a plate of four fives so called engraved for said Manufacturers & Mechanics' Bank by Danforth, Wright
109 & Co., and that said Seth so received said last-named sum of twenty thousand dollars in said bills, of the value of twenty thousand dollars, in place and stead of said thirty-eight thousand dollars so before received by said Seth as collateral security for said drafts for said thirty thousand dollars so loaned by your orator to the said Manufacturers & Mechanics' Bank; and the said Seth then and there gave in his own name to one Burr Higgins, who was then and there an officer or agent of said Manufacturers & Mechanics' Bank, a receipt for said twenty thousand dollars, in which he said Seth expressed that he had received said twenty thousand dollars in place of said thirty-eight thousand, and as collateral thereto, said receipt dated January 22d, 1855, a copy of which is hereto attached, marked Exhibit No. 3, and that it then and there became and was the duty of the said Seth to deliver to your orator said sum of twenty thousand dollars, but the said Seth, instead thereof, and craftily designing and intending to injure, cheat, and defraud your orator in the premises, ever after that time fraudulently concealed from your orator, its officers and stockholders, the fact that he had so received said sum of twenty thousand dollars in the place of said thirty-eight thousand dollars, as aforesaid. Your orator further shows that afterwards and before the first day of May, A. D. 1855, your orator and said Manufacturers & Mechanics' Bank had negotiated in relation to a new contract, which should modify or change the provisions of the contract, a copy of which is Exhibit No. 1 to this bill, and had substantially settled by letter the terms of an agreement between your orator and the said Manufacturers & Mechanics' Bank such as was afterwards entered into, and dated on the 8th day of August, A. D. 1855, as hereinafter more particularly set forth. And that afterwards and about the first day of May, A. D. 1855, the said Manu-

facturers & Mechanics' Bank delivered to said Seth as cashier of your orator, and for your orator, the further and other sum of twenty
110 thousand dollars under and in pursuance of said agreement, as substantially settled by letter as aforesaid.

4. Your orator further shows that afterwards, about the 8th day of August, A. D. 1855, the said Seth, as cashier as aforesaid, went to New York to close the contract or agreement, as had been substantially settled by letter as aforesaid, and that in pursuance of said negotiating the said Seth, being cashier as aforesaid, entered into, in his own name, but for and behalf of your orator, that is, in his name, but for the benefit of your orator, a certain contract in writing, a copy of which is hereto attached and marked Exhibit No. 2.

And your orator further shows that at the time of making and entering into said agreement it was perfectly understood and agreed by and between said Seth and said Manufacturers & Mechanics' Bank that he was making the same for the benefit of your orator, and that he was cashier of your orator, and the thirty-three thousand dollars, expressed in said last-named contract to be loaned by said Seth, was not otherwise loaned than by cancelling the securities held by said Seth, as cashier as aforesaid, for the said thirty thousand dollars loaned by your orator as aforesaid, with the interest reckoned thereon at three thousand dollars.

5. And it was then and there agreed by and between the said Manufacturers & Mechanics' Bank and the said Seth, cashier as aforesaid, that the twenty thousand dollars in four fives from the plate engraved by Danforth, Wright & Co., and the twenty thousand dollars in said four fives which were delivered to your orator about May 1, 1855, should be considered and held to be forty thousand dollars in said four fives, furnished to give to your orator under said contract, and that the drafts and evidences of said loan of thirty thousand dollars should be, and they were then and there cancelled, which, with the said interest thereon, reckoned at three thousand dollars, should be the said loan of thirty-three thousand dollars mentioned in said last-named contract, and the said Manufacturers & Mechanics' Bank
111 then and there surrendered to said Seth the receipt which said Seth had given to said Burr Higgins for said twenty thousand dollars, a copy of which is said Exhibit No. 3 to this bill.

6. That said twenty thousand dollars, in said four fives, so received by said Seth, on the said 22d day of January, 1855, as collateral security as aforesaid, remained in his said Seth's hands, at the time said contract, dated August 8, 1855, was made and executed, and the said Seth had never in any way or manner indicated to or informed your orator that he, said Seth, had ever received or held the same; and had in no way paid the same over to your orator, or for your orator's benefit, but then held the same, or had then fraudulently converted the same to his own use.

7. Your orator further shows that the said Manufacturers & Mechanics' Bank never caused but one hundred and ten thousand dollars of said bills to be struck off from the plate aforesaid; that of that sum twenty thousand dollars was delivered to said Seth on the 22d

day of January, A. D. 1855, as before stated; twenty thousand dollars was delivered to your orator, as hereinbefore stated, about the 1st day of May, A. D. 1855; and that the other seventy thousand dollars in said bills was delivered by said Manufacturers & Mechanics' Bank to your orator subsequent to the date of said contract, dated August 8, 1855; and that by the very terms of said contract of August 8, 1855, the whole issue of said bills to the whole amount of one hundred and ten thousand were to be furnished under that contract to your orator, and none others were to be issued, so that said Seth, who then held the said twenty thousand dollars in said bills, understood and well knew that the contract was broken at the time it was signed, or that said twenty thousand so received by him must form a part of said one hundred and ten thousand dollars to be furnished to your orator under and by the terms of that contract, and your orator says that it was then and there expressly agreed and

112 understood by and between said Manufacturers & Mechanics' Bank and the said Seth that the said twenty thousand dollars received by said Seth Jan'y 22d, 1855, and the twenty thousand dollars received by your orator about May 1st, 1855, should be considered as forty thousand dollars in said bills furnished to your orator by said Manufacturers & Mechanics' Bank under said contract, dated August 8th, 1855.

8. Your orator further shows, that said Seth was duly authorized by your orator to make and enter into said contract, dated August 8th, 1855, for and on behalf of your orator; that both your orator and the said Seth, ever after the making of said last-named contract, have regarded and considered it as the contract of your orator and not the said Seth personally; that therefore neither your orator required said Seth, nor has he ever accounted to or with your orator for the said thirty-three thousand dollars mentioned in said contract as loaned by said Seth, and which was your orator's money, as before stated; that in June, A. D. 1855, after the terms of the contract had been settled by letter, as subsequently reduced to form under date of August 8, 1855, and after your orator had received said twenty thousand dollars in said bills about May 1, 1855, as before stated, the said Seth being cashier as aforesaid, caused to be published in a newspaper, printed at said Rock Island, a notice to the effect that your orator, not the said Seth, had completed an arrangement to use a limited amount of the issues of the said Manufacturers & Mechanics' Bank of Columbus, Georgia, and would receive the same on deposite or otherwise, in the same manner and on the same terms that said complainant received the issues of Ohio, Kentucky, Virginia, and Indiana banks; and the said Seth has never pretended that he, personally, was interested in or liable upon said contract of August 8th, 1855.

9. And your orator further shows, that said Seth has never

113 accounted to or with your orator for and on account of said twenty thousand dollars so received by him on the 22d day of January, A. D. 1855, as aforesaid; but that said Seth has ever and still does represent to your orator, that said Manufacturers &

Mechanics' Bank has furnished to your orator ninety thousand dollars in said bills under said contract and no more; and that said Seth ever fraudulently concealed from your orator the receipt by him of said twenty thousand dollars on the 22d January, 1855, as aforesaid, although it became and was his duty to have informed your orator of that fact immediately after he received the same, and especially after said contract of August 8th, 1855, was made, which contract, and the said simultaneous arrangement, made the same the money of your orator absolutely under said contract.

10. Your orator further shows, that the said Seth, as cashier of your orator as aforesaid, was fully authorized to receive said twenty thousand dollars on the 22nd day of January, 1855, for your orator, and that he did receive the same for your orator; and that he was fully authorized by your orator to make and enter into the written contract and simultaneous verbal arrangement and understanding on the 8th day of August, 1855, hereinbefore stated and set forth, so that your orator as between your orator and the said Manufacturers & Mechanics' Bank was fully bound thereby in all respects.

11. Your orator further states, that said Seth and said Mary H. removed from said Rock Island to Beloit, in the State of Wisconsin, about the 7th day of July, 1856, where they have since and now do reside.

And your orator is informed and believes that the said Mary H. Mann now holds and is seized in fee of the following real estate in the said county of Rock, described as follows, viz :

A part of section 25, town. 1 north, of range 12 east, particularly described, as follows: Beginning in centre of Turtle creek, in a line running north 88¼°, west from a point in east line of said section 19 chains and 91 links south of quarter section post; thence north 88¼°, west 2,030 links to centre of Beloit and Janesville road; thence south 35¾°, west in centre of said road 732 links to the northwest corner of land conveyed to J. V. Smith by B. Baker & wife; thence south 87¼°, east on line of said Smith land about 2,700 links to centre of said creek; thence up said creek to place of beginning, containing 14½ acres; also another piece in Beloit in said county, described as follows, viz: beginning at the northwest corner of land deeded by Lucy Ann Harris to Eliza M. Hinman; thence north 1½°, east 12 chains and 8 links to the southwest corner of land sold by Hawkins to Rufus Clark; thence south 88°, east along the south line of said Clark land 30 chains and 15 links to the centre of the Beloit and Janesville road; thence south 35 and ½°, west along the centre of said road 8 chains and 47 links to the southwest corner of said Clark land on the east side of said road; thence south 88¼°, east 24 chains and 52 links to the range line; thence south on the said range line 2 chains and 54 links; thence north 88¼°, west 25 chains and 30 links to the centre of said road; thence south 35½°, west along the centre of said road 3 chains and 15 links to the northeast corner of the said Hinman land aforesaid; thence north 88¼°, west 22 chains and 5 links to the place of beginning, containing about 38 and one-half acres, excepting about six

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acres of land sometime conveyed by Samuel S. Johnson to one Blanchard, off of the south side of the last above-described premises on the west side of said road; also another piece of land particularly described as follows: Part of section 25 in said town. described as follows, commencing on the range line in the bed of Turtle creek; thence running south $1\frac{1}{2}°$, west on the range line 120 links to the southeast corner of a six acre and a half lot owned by said Mary H. Mann; thence westerly on the south line of said lot 610 links to the centre of Turtle creek; thence southerly 144 links to a point
115 650 links west of the range line; thence southeasterly 484 links to a point 393 links west of the range line; thence south 47°, east to the south line of a $14\frac{1}{4}$ acre lot owned by said Mary H. Mann, west of said creek; thence north 66° 27″, east 570 links; thence north 18° 28,″ west 541 links to the place of beginning, containing about 3 and $\frac{3}{4}$ acres; also another piece in section 30 of said town., described as follows: beginning at a point in the centre of the Milwaukee road, 1,562 links northeasterly from the point where the range line crosses the said road, and running thence north $51\frac{3}{4}°$, east 456 links; thence $41\frac{1}{2}°$, west 933 links to the centre of Turtle creek; thence down the centre of said creek to the northeast corner of land sometime deeded by said Mary H. to W. T. Miller; thence south $41\frac{1}{2}°$, east to the place of beginning, containing 4 and $\frac{5}{100}$ acres; also another piece of land in the town of Turtle, county of Rock, and State of Wisconsin, described as follows, to wit: beginning in the range lines between the towns of Beloit and Turtle, 521 links north of the corners of sections 25, 30, 31, and 36, and the centre of the Milwaukee road; thence running north $51\frac{3}{4}°$, east, in the centre of said road 2,021 links; thence north $41\frac{1}{2}°$, west 933 links to the centre of the Turtle creek; thence down the centre of said creek to the said range line; thence south one-half degree, west, on said range line, 120 links to a stake; thence west, on the south line of land sometime owned by one Blodget, 610 links to the centre of the creek; thence down the centre of said creek to said range line; thence south $\frac{1}{2}°$, west, on said range line, 544 links to the place of beginning, containing about 20 acres; and other large and valuable tracts of real estate in the State of Wisconsin or elsewhere, and a large amount of personal property, money, and choses in action.

12. And your orator is informed and believes, and there-
116 fore thereupon shows, that the said Seth H. Mann purchased all said real estate and other property from said twenty thousand dollars so by him received and by him unaccounted for, or the avails thereof, and procured the title of said lands to be conveyed to the said Mary H., so that she could pretend to hold the same as her separate estate, and he, the said Seth H., be thereby enabled to conceal from your orator the ownership of said lands; and that the said Seth H., pretending to be the agent of the said Mary H., has caused said lands to be greatly improved, and has erected thereon a large and elegant mansion, in which the said defendants and their family now reside; and that said lands were paid for, and said improvements and said mansion were made and erected thereon with said

twenty thousand dollars or the avails thereof so belonging to your orator, and so received and unaccounted for by said Seth H., as hereinbefore stated; and that the said Mary H. has never received from any source whatever, other than the said Seth H., her husband, any property or estate whatever; and that all the property, real, and personal, money, choses in action and effects whatever which the said Mary H. pretends to own and hold, she has derived directly or indirectly from her said husband.

Your orator further shows that the said Seth and Mary fraudulently and falsely pretend at times that she, the said Mary, has received large presents and bequests from friends, and particularly from her son James C. Mann, and pretends that shortly before said Seth and Mary moved to Rock Island, as before stated, that the said Seth paid to one Dennis a large sum of money to pay a note he held against said Seth, and for the benefit of the said Mary, and sometimes pretend that the said Seth or the said Mary has borrowed large sums of money from Mrs. Chillana O'Connor, upon notes,
117 mortgages, or or otherwise; but your orator charges the contrary to be the fact in every respect.

And your orator further shows that said Seth H. and Mary H. came to reside in Beloit a few years before they removed to Rock Island, as before stated, and that said Seth, when he removed to Beloit, was a poor man, and while residing there took the benefit of the insolvent laws of and in the State of Illinois, and had no property or money, and that said James C. Mann lived with his father and had no property whatever, and was worth nothing when the said Seth and Mary moved to Rock Island as aforesaid, and that said Seth had no money to pay to said Dennis as they pretend; and that said Chillana O'Connor never loaned any money to said Mary H., but that said mortgages are fraudulent and without any consideration; and that the said Seth gave said James C. all that the said Seth and Mary pretend that said James gave to said Mary.

That your orator has repeatedly, and particularly at Beloit, in the said district of Wisconsin, on the first day of February, A. D. 1860, requested the said Seth H. Mann to reckon with, and account with and to your orator for said twenty thousand dollars so received and unaccounted for by him as aforesaid, and the avails thereof, and interest thereon, but that the said Seth H. so to do has ever, and still does refuse, and that your orator is unable to prove, except by the oath of the said Seth H. Mann, the precise amount of proceeds realized by him from said twenty thousand dollars in bank bills by him unaccounted for as aforesaid, and the times respectively when he so received avails therefrom.

To the end, therefore, that the said Seth H. Mann and Mary H. Mann, defendants, and their confederates, may respectively full, true, direct, and perfect answers make, upon their respective corporal oaths, according to the best and utmost of their respective knowledge, information, and belief, to all and singular the matters
118 and charges aforesaid, and that as fully and particularly in every respect as if the same were here again repeated, and

they respectively thereunto particularly interrogated, and more especially that they may respectively set forth and discover, according to the best and utmost of their knowledge, information, remembrance, and belief—

1. Whether said Seth H. Mann and said Mary H. Mann, defendants, are, and how long they have been husband and wife.

2. Whether the said Seth H. Mann and Mary H. Mann did not some time, and at what time remove from Wisconsin to Rock Island, in the State of Illinois; and whether the said Seth H. was not then very poor; and whether the said Seth H. then owned any property, and if any what, where situated, what was its situation, description, nature, and condition, real or personal, and what was its value; and whether the said Seth H. then had any means or money; if so what were they and how much, and where situated; and whether the said Mary H. then had any money real or personal, in her own separate right, and what was the nature, amount, condition, value of the property or money so held by her, and when, at what place, from whom, and in what manner did she receive, and how and for what purpose did she receive the same.

3. Whether the said Mary H. had held or owned in her own right any money or property at the time when she intermarried with the said Seth H., and its precise nature, description, amount and value, and in what State or country did the said defendants intermarry.

119 4. Whether the said Mary H. has ever, and when, since the intermarriage of the defendants, received from any person, and what and who, any and what kind and amount, description, and value of property; whether she has since as aforesaid received any amount of money, and what amount, and from whom received, and when and where received, and how the same has been invested and disposed of, and where is the same or the avails thereof.

5. Whether your orator is not a banking corporation organized and doing business under the general banking law of the State of Illinois, and how long it has been such corporation, and the said Seth H. was not at some time, and what time, elected by the board of directors of your orator its cashie'r, and whether he accepted said election, and whether he did, and when enter upon the duties of his said office, at an annual salary of about fifteen hundred dollars, or some other and what sum; and how long he continued such cashier, and whether while he was such cashier he had the general superintendence and control of the business of your orator.

6. Whether on or about the 8th day of August, 1855, or upon some other and what day, the said Seth H., being still your orator's cashier, made and entered into a certain contract in writing a copy of which is attached to this bill of complaint and marked exhibit No. 2, or make or enter into a contract resembling said written contract, a copy of which is attached as aforesaid, and if said attached copy is not a true copy of the contract entered into in that behalf then set out and discover fully the nature, terms and tenor of the contract which the said Seth H. Mann did make in that behalf on or about

the day and year last aforesaid, and set forth a copy thereof in full.

120 7. Whether the said Seth H. was not when he made and entered into said contract, or whatever contract was made in that behalf on or about the day and year last aforesaid, acting as the cashier of your orator; and whether he did not make and enter into said contract in his own individual name but on account and for the benefit of your orator, and whether the said Seth H. ever advanced or loaned of his own money any part of the said thirty-three thousand dollars in said contract agreed to be advanced or loaned; and whether the said Seth H. as cashier as aforesaid did advance or loan, under and in pursuance of said contract, the said thirty-three thousand dollars in the money assets or credits of your orator; and how, when, where, by whom, and to whom, and in what manner, and from whose funds, assets and credits was said sum of thirty-three thousand dollars loaned or advanced under said contract.

8. Whether all the negotiations between said Seth H. and said Manufacturers and Mechanics' Bank which resulted in said written contract were not made and had between said Seth H. as cashier of your orator and the said other party to said contract; and whether said Manufacturers and Mechanics' Bank did not understand and know, and whether its officers and agents did not understand and believe and know, that said Seth H., in entering into said contract, was acting in his charactar as cashier of your orator, and for your orator's benefit, and on your orator's account.

9. Whether about the month of August, A. D. 1854, the said Seth H. Mann did not, acting as cashier as aforesaid, and for and on account of your orator, enter into and conclude with said Manufacturers and Mechanics' Bank a contract partly in writing and partly in parol, as stated in this bill; or what other and different were the terms

121 of said written and parol contract or agreement; (discover and set forth the same in full) for some other, and fully discover what other or different purpose, and whether said Seth H. had not, prior to entering into said written contract dated August 8th, 1855, advanced to said Manufacturers and Mechanics' Bank thirty thousand dollars of the money or funds of your orator, under and in pursuance of said agreement made in 1854, as herinbefore state; and whether said thirty thousand dollars and interest thereon reckoned at three thousand dollars did not constitute the said sum of thirty-three thousand dollars in said written contract of August 8, 1855, recited to have been advanced by said Seth H. to said Manufacturers and Mechanics' Bank under and in pursuance of said written contract.

10. What amount of the bills of said Manufacturers and Mechanics' Bank did it advance in all, under said written contract dated August 8, 1855, and to whom, and when, and where deliver the same respectively.

11. Did said Manufacturers and Mechanics' Bank deliver under said contract of August 8th, 1855, one hundred and ten thousand dollars in its said bank bills under said contract of August 8th, 1855; if so state and discover fully when and where, at what time or times re-

spectively, what amount at each time, to whom each amount, and to whom, when and where, every amount thereof was delivered respectively.

12. Whether the said Seth H. ever communicated to any officer or stockholder of your orator, if so, who, when and where, that the said Seth H. had received and held said twenty thousand dol-
122 lars in said bank bills received by him January 22, 1855, and whether the said Seth H. did not always pretend to your orator, its officers, agents and stockholders, that said Manufacturers and Mechanics' Bank had never advanced under said written contract dated August 8, 1855, more than ninety thousand dollars.

13. Whether said Seth H., as cashier as aforesaid, caused notice to be published at or near said Rock Island that your orator would receive at its counter, on deposite or in payment or otherwise, and how otherwise, the bills of the said Manufacturers and Mechanics' Bank, or if not that particular notice, what notice in relation to said bank bills the said Seth H. did cause to be published, and when and where published.

14. Whether the said Seth H. disposed of said twenty thousand of said bills so received by him January 22d, 1855, by paying them out at the counter of your orator and mingling them with the other ninety thousand dollars in said bills; or how the said Seth H. did dispose of said twenty thousand dollars in said bills, or whether he now has and holds them undisposed of, or any of them, and how many of them.

15. Whether said Seth H. now has any of said twenty thousand dollars of said bills so received by him and unaccounted for by him as aforesaid, if any, how many, and what has he done with those thereof which he has not at present, when, where, to whom and upon what consideration did he part with them.

16. Did the said Seth H. ever have, or hold twenty thousand dol-
lars, or any other, and what sum, in the said bank bills, de-
123 scribed in said written contract dated August 8th, 1855, which he did not account for with your orator, if so, when, where, of whom, for what purpose, upon what condition did he receive the same, and how, when, where, to whom, and upon what consideration and occasion did he part with or dispose of the same.

17. Did the said Seth H. in any way mark or distinguish said twenty thousand dollars in said bank bills so received and unaccounted for by him, so as to distinguish them from the ninety thousand dollars in said bills which he pretended to your orator the said Manufacturers and Mechanics' Bank had delivered to your orator under said contract in writing, dated August 8th 1855.

18. Whether the said Mary H. is seized and possessed in fee, or holds or pretends any and what title to or estate in any of the real estate in this bill of complaint described, and what is the exact legal and sufficient description thereof; and of whom and when and for what consideration she purchased each piece thereof respectively, and when, where, of whom, and in what manner she received the several sums she paid therefor respectively, set forth and discover fully.

19. Whether the said Seth H. did not about the 22d day of January, A. D. 1855, receive from the Manufacturers and Mechanics' Bank, or from some officer or agent or stockholder of said bank, twenty thousand dollars in the bills of said last-named bank of the kind called four fives, and struck by or from the plate engraved by Danforth, Wright & Co., and whether he did not receive them from Burr Higgins, then an officer or agent of said last-named bank in place and instead of thirty-eight thousand dollars in the bills of said bank which the said Seth had before received as collateral for the loan of
124 thirty thousand dollars from your orator to said Manufacturers and Mechanics' Bank, and whether he gave a receipt therefor, as stated in this bill, and whether exhibit No. 3, to this bill is a true copy, or substantial copy of said receipt, and if not, set out said receipt in full.

20. Whether the said Seth held and had the 20,000 dollars in bills mentioned in the last interrogatory at the time he entered into the contract dated August 8, 1855, and if not, when, where, to whom, and upon what consideration, under what circumstances and upon what contract or agreement did the said Seth part with the same after he received the same; did he loan any part thereof, if so, when, where, to whom, and at what rate of interest; did he after receiving the same as aforesaid deposite the same in any bank, if so, what bank, when, where, in whose name, and how long did it remain on deposite, and when was it drawn by said Seth, or any one else, and who, or was it invested; was it or any part of it delivered by said Seth to any other, and what person or persons, and when and for what purpose.

21. Whether he the said Seth did not use said bills to the amount of 20,000 dollars mentioned in the last interrogatory about his own business and for his own use and how, and when and where, did he use the same, and whether he held them on the date of said contract dated August 8th, 1855, if yea, when, where, to whom, for what purpose, upon what consideration did the said Seth, use, invest, or deposite or loan the same afterwards, and whether the said Seth now has the same or any part thereof, and what part, and if not how he has lost or disposed of the same, and where the same now is, or how invested, or where placed, kept or squandered; if the said Seth has lost it by the failure of any bank, what bank, when and where, whether he has loaned it to irresponsible persons, if so when, where, to whom and for what purpose; has it or any part of it been
125 collected after investments and re-investment, if so, of whom, when and where collected, and to whom, when and where and in what sum or sums been reinvested; whether said bills had any mark to distinguish them from the 90,000 dollars of said bills actually received by your orator, if so, what was the mark, was it a letter, and what letter, or was it by cutting the bill, if so, how, or how otherwise were the said bills marked to distinguish them as aforesaid.

22. In what building, office, or place in the city of New York did the said Seth receive said 20,000 dollars in said bills. Did he carry them away from said office-building or place where he received the same;

if so, where did he first take them, and where did he next put or leave them—in whose custody or possession. Where did he next receive or have them, and where did he next leave them, and when [and when] and where did he next leave them, and how did he finally dispose of them. In whose hands, possession, or keeping are they now; who has control over them; when, where, to whom, did he last deliver or pay the same, or any, and what part thereof.

23. Did not the said Seth and Mary, about 1850, or at what time, first come to reside in Beloit, in Wisconsin; and whether said Seth had at that time any property whatever; if so, was it real or personal; if real, where was it; what is its precise and certain description, and all of it; of whom did he buy it, and what sum did he agree to pay for it; how much had he paid for or towards it, and how much did he still owe for each piece of it, respectively; what was the value of each piece of it; who possessed it; in whose name was the title to each piece, respectively; was any, and what part of it, encumbered, and for what amount. Whether he had any, and how much, money at that time, and what was it in; was it coin; and if so, where was it; how and where deposited—in whose name, and how held; or
126 was it in bills; if so, on what bank; or whether he held at that time any certificates of deposite; if so, how many; to what amount each; by whom given; to whom given; and when, where, how, for what, and upon what consideration did he dispose of them. Whether he had any personal property at that time; if so, what; where was it; what was its value, and the value of each and every article. Whether he held any choses in action, or had any money or other thing held in trust for him; if so, what. If choses in action, set forth a complete list of them—who was the makers or obligors—what was their dates—where and for what were the debts contracted—where did the debtors live—were they responsible, and what he has since done with them. Was any real or personal property, or money, or things in action, or other things whatever, held by any other person, and who, in trust for the benefit of said Seth; if so, describe the same fully, and set forth and discover a complete list, with description and value, of everything, real or personal, moneys or other things he then owned, or had any equitable or legal interest in, right to, or lien upon.

24. Whether the said Mary, when the said Seth and Mary first moved to Beloit, had any property, real or personal; if so, in what did it consist; if in real estate, where was it situate; what was its precise and certain description; what was the value of each piece; of whom did she purchase it—when, and where, and upon what terms, and how much had she actually paid therefor; and when, and where, and to whom had she paid it; whether it was encumbered; if so, to whom; for how much, and for what purpose or consideration. If she had any personal property, set forth a perfect statement of it—giving description, situation, and value—where she obtained it, and when, and from whom, and for what consideration. Had she any money; if so, how much; was it in coin or in bills; if bills, on what bank;
127 where was it kept—by said Mary herself, or was it on deposite for her; if so, where, and with whom. Had she any property,

not in her possession; if so, what, and where. Had she any choses in action; if so, what; where given; by whom, and for what, and for what amount given, and when payable, and whether against responsible persons. Set forth and discover a full, true, direct, and perfect schedule and inventory of each and every article or thing of real or personal property, money, choses in action, or other thing, owned by her at that time, or held in trust for her, or in what she had any legal or equitable interest, or upon which she had any lien or incumbrance whatever—giving description, situation, and value, and from whom, and when she received it; and stating how and when her right to, or lien upon, the same became vested or fixed.

25. Whether the said Seth H., or the said Mary H., and which, purchased any, and what, property after they came to reside at Beloit, and before they went to reside at Rock Island; if so, of whom; what is its exact description; what did they, or either, and which of them, actually pay therefor; and in what was the payment made; and how much did they, or either, and which of them, agree to pay therefor, and for each and every piece or parcel of land purchased; and was the same encumbered; if so, to whom and for what, and to what amount; and whether, during the time mentioned in this interrogatory, they, or either, and which of them, made or obtained in any way, and what way, and from whom, any money or property, and what, and how much.

26. Whether the said Seth paid to one Dennis any, and what sum, on a note for the benefit of the said Mary; if so, when, and where, in what town, city, or place, and in what house, bank, or office, was the payment made, and what time of day was it made; who was present when it was made; was it paid in coin; if so, where and when
128 did said Seth obtain it, and of whom did he obtain it; was it paid in bills; if so, what bank or banks, and when, and where, and of whom, did the said Seth receive them; was it paid in check on any, and what bank, or how otherwise, was it made; and where does the said Dennis now reside, if he is living; if it was made in any other manner than those enquired of, state fully how it was made, and when, and where, and how, and of whom, the said Seth obtained whatever said payment was made in; and to whom said note was made payable—whether it was not made payable to one Eliza Dickenson; if so, where does she now reside, if living; what was the date of said note; for what was said note given; when the same was paid—was it by an actual manual delivery of money, coin, bills, or other, and what other thing, by said Seth to said Dennis; or did said Dennis deliver said note to said Mary, and said Mary deliver it said Seth, without such actual and formal delivery of money or other thing in payment. Did the said Dennis pay the same thing or things to said Mary he had received from said Seth in payment of said note; did he do so at the same time the payment was made for said Seth; was she present when said Seth paid the same to said Dennis; and what did she do with what said Dennis paid to her; did she not hand it back again to said Seth; and did he not deposite it or use it about his own business; or how, when, and where did he use it; to whom did she pay it, and for what.

And that the said written contracted, dated August 8, 1855, may be declared and decreed to have been made and entered into by the said Seth H. Mann for, on account of, for the benefit of, and as the agent of, your orator; and that the said Seth H. may be ordered, adjudged, and decreed to account to and with your orator for, of and concerning said twenty thousand dollars in the said bank bills, so received by him, on the 22nd day of January, A. D. 1855, and
129 unaccounted for as aforesaid; and that the said Seth H. Mann may be ordered, adjudged, and decreed to pay to your orator the said sum of twenty thousand dollars, and interest thereon from the time and times, respectively, when he disposed of the same, or changed or converted the same into other funds or money; and that your orator may have a personal decree therefor against said Seth H. Mann; and that said real estate hereinbefore described may be adjudged and decreed to have been purchased with your orator's said money as aforesaid; and that the said Seth H. and Mary H. may be ordered, adjudged, and decreed to convey all of said real estate and the improvements thereon to your orator; or that said real estate hereinbefore described may be ordered to be sold, and the avails thereof applied to the payment of said twenty thousand dollars and interest, which said Seth H. may be ordered, adjudged, and decreed to pay to your orator; and that a receiver of said real estate, with the usual powers of receivers in like cases, according to law and the practice of said court, may be appointed; and that your orator may have such other or further relief as the nature of its case may require, and as shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orator a writ of subpœna, issuing out of and under the seal of said court, to be directed to said Seth H. Mann and Mary H. Mann, defendants, commanding them and each of them, by a certain day, and under a certain penalty therein to be inserted, that they and each of them be and appear before your honor in the said District Court, in equity, then and there to answer the premises, and further to stand to, and abide by, such order and decree therein as shall be agreeable to equity and good conscience.

N. C. GRIDLEY,
Sol'rs for Compl'ts.
MAT. H. CARPENTER,
Of Counsel.

130 NOTE.—Each and every of defendants are required to answer each and every and all of the interrogatories in this bill numbered, respectively, from No. 1 to No. 26, inclusive; and also each and every allegation, matter, and thing in said bill set forth, stated, and alleged.

N. C. GRIDLEY,
Sol. for Compl'ts.

Exhibit No. 1.

For and in consideration of one dollar in hand paid to the "Manufacturers & Mechanics' Bank of Columbia," in the State of Georgia, the receipt whereof is hereby acknowledged, the said bank hereby proposes and agrees to furnish to Marcus B. Osborn, of Rock Island, Illinois, one hundred and fifty thousand dollars in its circulating notes, of the denomination of five dollars, (or any other not under five that may be preferred,) for a period of six years, or until the first day of January, 1861, for purpose of circulation; which circulation is to be protected and redeemed by said Osborn in New York city during said time, at the same rate that the bank protect and redeems its other issues in the city of New York, and to protect at such other points as may be deemed necessary by said Osborn to secure a good circulation.

If during said time any of the circulating notes furnished to said Osborn should be returned, or presented for redemption at the counter of the said bank, or be redeemed through any of its agencies, all such notes are to be remitted to the agency of said Osborn, in the city of New York, for redemption, as above provided; and a failure, at any time, to take up and redeem, on demand, during the usual bank hours, any of such circulating notes in the manner aforesaid, shall be deemed a forfeiture of this agreement, giving the bank a right to demand its discontinuance and settlement. The said
131 Osborn is to pay interest at and after the rate of four per cent. per annum, semi-annually, on the first days of January and July in each year, or as soon thereafter as the calculations can conveniently be made on the average circulation which may be obtained or maintained, by taking the amount in circulation every Saturday, and average at the expiration of every six months as aforesaid.

The said Osborn desires to have a plate of two five-dollar notes engraved by Danforth, Wright & Co., so that the notes may be at once distinguished from the ordinary issues of said bank, which notes are to be for the exclusive use of said Osborn during the time this contract shall be in force.

The plate, and all notes printed over said $150,000, to remain in the hands of Danforth, Wright & Co., and after the first 17,000 impressions are printed, no more are to be printed from said plate except by the joint order on said bank and said Osborn, or by said Osborn's attorney, hereinafter mentioned. The $150,000 to be, however, kept up by an exchange of new issue from said plate for all worn out, badly soiled or mutilated notes returned to the agency of said bank in the city of New York by said Osborn for that purpose.

The expenses of plate, printing, &c., to be equally divided between the parties.

The notes to be signed, prepared and delivered to the agency of said Osborn, in the city of New York, with the least possible delay, in packages under seal.

If, on or before the 1st day of January, 1861, the said bank should decline to continue this contract and the arrangement under it for a further similar term of years, then said bank is to repay to said Osborn, his heirs or assigns, the said cost of "engraving, printing, &c.," which shall have been paid by him, but without interest.

132 And it is further agreed that said circulating notes shall be delivered to Seth H. Mann, as attorney and agent of said Osborn, and the custody, controll and management of the same, and proceeds thereof, shall be and remain with said Mann, as said Osborn's attorney and agent aforesaid, during the continuance of this contract and the arrangements under it; and whenever such "custody, controll and management" shall be discontinued by said Mann, either by his own or said Osborn's act, then said bank shall have the right to amend this contract, so far as to require its immediate close and settlement.

And when this contract shall be terminated and a settlement thereof made, the said bank shall and will at all times receive in payment the notes of said bank, or other funds of equal value, which the said Osborn, his heirs or assigns, may at any time offer in payment thereof.

And the said Marcus B. Osborn, by S. H. Mann, his attorney, hereby accepts the terms set forth in this contract, and hereby promises and agrees to carry out and faithfully fulfil the stipulations set forth to be kept and fulfilled by him.

Witness our hands and seals, at the city of New York, this 20th day of October, 1854.

[SEAL.] (Signed) A. U. RANSOM, *Pres't*,
[SEAL.] W. B. STORM, *Cash.*,
Pres't and Cash. of the Manufacturers and Mechanics' Bank of Columbus, Ga.
[SEAL.] M. B. OSBORN,
By S. H. MANN, *his Att'y.*

In addition to the foregoing it is further agreed that, for the purpose of providing for the redemption of any of said issues that may be presented at the counter of said bank for redemption, in amounts of $1,000 or over, the said Osborn agrees to furnish bank drafts of the Rock Island or some other solvent bank, on New York, to the amount of twenty-five thousand dollars, pro rata, as said bills

133 are delivered, payable to the order of said bank upon the return and delivery to the agency of said Osborn, in New York, of an equal amount of said bank notes so put in circulation by said Osborn, none of said drafts to be used, however, except in cases where said issues are taken to the bank and their redemption demanded, nor in any case whatever, after said bank shall fail to redeem its other issues at its counter and in New York.

The amount of such drafts to be kept up so long as said bank redeems its other issues as aforesaid; that is, after one or more of said drafts shall have been paid as above provided, and the bills

delivered to said Osborn's agent in New York, then an equal amount to be again forwarded in due course of mail.

[SEAL.] (Signed) A. W. RANSOM, *President.*
[SEAL.] W. B. STORM, *Cashier.*
[SEAL.] M. B. OSBORN,
By S. H. MANN, *his Attorney.*

For one dollar, value received, the Rock Island Bank, of the State of Illinois, hereby guarantees the fulfilment of the above contract on the part of M. B. Osborn.

(Signed) S. H. MANN, *Cash'r.*

Exhibit No. 2.

This agreement, made the eighth day of August, A. D. 1855, by and between Seth H. Mann, of Rock Island, and State of Illinois, the party of the first part, and "The Manufacturers and Mechanics' Bank of Columbus," Georgia, the party of the second part, witnesseth: That said first party hereby covenants and agrees, in consideration of the undertakings and stipulations of said second party hereinafter recited, to be kept and performed, to loan to the said second party
the sum of thirty-three thousand dollars, the receipt whereof
134 is hereby acknowledged, for the term of four years from the
15th day of October next, and for one year thereafter, if this contract shall not be sooner closed and settled, without interest.

The said party of the second part hereby covenants and agrees, in consideration of the loan above mentioned, to furnish, and on or before the first day of October next, to deliver to the order of said first party, his heirs or assigns, to his or their agent in the city of New York, circulating bills or notes of the "Manufacturers and Mechanics' Bank of Columbus," Georgia, to the amount of one hundred and ten thousand dollars, the same to remain without interest for the term of four years from said 15th day of October next, and for one year thereafter, also without interest, during which last-mentioned year this contract is expected to be closed, so that the business shall be settled up as nearly as possible within five years from said 15th day of October, 1855.

The said first party hereby further agrees, upon receiving the entire amount of said issue herein agreed to be delivered to him, to provide and deliver to the said second party his papers, based upon this contract, and made to represent said loan of issues, in part, in said bank in the form of notes, bills of exchange, and sight drafts on his correspondent in the city of New York, to an amount not exceeding seventy-seven thousand dollars, the said sight drafts to be used only to redeem said issues when presented at the bank in Columbus for redemption, and for no other purpose whatsoever. The issues so redeemed are to be returned to the agent of said first party upon presentation of any of said drafts, and the amount of the sight draft

or drafts so used in their redemption are to be replaced by
135 other similar draft or drafts, to be sent to the bank in Columbus, so as to keep the amount good.

The said first party hereby further agrees to protect said issues received by him, under this contract, in such manner as to prevent, if possible, their coming home to Columbus for redemption, by receiving the same on deposit, or in payment for exchange or coin at the counter of Rock Island Bank, and by providing for their redemption at such western points as may be deemed necessary by said first party, to secure a good and profitable circulation at rates current for the notes of Kentucky and Virginia banks; and also in the city of New York at the same rate that said bank redeems its other issues in that city.

It is hereby jointly agreed that the circulating notes furnished to said first party shall be from the plate of four fives engraved by Danforth, Wright & Co. for said second party, and the impressions from said plate shall not be used for any other purpose during the continuance of this contract. Whenever any of the said notes shall become mutilated, they may be returned to the agent of said second party, or sent to the agent of the said first party in the city of New York; and new ones of like amount shall be issued and sent to one of said agents in New York, and be delivered to the agent of said first party in exchange for said mutilated notes. The said second party is also within thirty days to remit to New York, to the agent of Rock Island Bank, an amount sufficient to reimburse said bank on account of its payments towards engraving said plate and printing therefrom.

It is also hereby agreed jointly that at the expiration of the term for which this contract is made, (being the 15th day of October, 1860,) the said first party shall pay to said second party, or
136 to its agent in New York, a sum equal to the difference between the loan first above mentioned and the one hundred and ten thousand dollars of issues aforesaid, (provided all of said issues shall have been delivered as herein agreed, but not otherwise,) leaving the balance of said issues after that time to be redeemed by said second party, which said balance said second party hereby agrees to redeem and to protect from loss or damage said first party and Rock Island Bank, on account of having paid out said issues and agreeing to receive them from the public. The said sum may be paid in the issues of said second party, or in any other funds of equal value; and upon the payment of such sum or balance by said first party, his heirs or assigns, the said second party hereby agrees to return and deliver up to said first party all and every of said notes, bills of exchange, and sight drafts which may previously have been delivered to said second party, and not before returned to said first party.

The said first party further agrees to have Rock Island Bank guarantee the fulfilment of this contract on the part of said first party, and also to endorse his notes and bills of exchange aforesaid.

Witness the hand and seal of the party of the first part, and the

hands and seals of the president and cashier of the party of the second part, the day and year above written.

[SEAL.] S. H. MANN.
[SEAL.] E. T. TAYLOR, *Pres't M. M. B'k.*
[SEAL.] J. H. FONDA, *Cash. M. and M. B'k.*

In presence of (as to the signature of) S. H. Mann and E. T. Taylor—
C. H. MANN.
W. C. MANN.
For J. H. Fonda—
T. R. MATTHEWS.

Exhibit No. 3.

Received, New York, January 22, 1855, from Burr Higgins,
137 a package of the circulating notes of 1,000 sheets, 5, 5, 5, 5, or $20,000, signed by the cashier and president of the Manufacturers and Mechanics' Bank of Columbus, Ga., for safe-keeping, and as collateral for the package of the notes of said bank for thirty-eight thousand dollars given to said Higgins on his receipt to collect therefrom thirty thousand dollars, and interest or return; and when so collected or returned, I will return to him, or account for the value of the same, the package hereby receipted.

(Signed) S. H. MANN.

Rule to plead.

MARCH 4, 1861.

On motion of N. C. Gridley, complainant's solicitor, it is ordered that the defendants plead answer, or demur to the complainant's amended bill of complaint on file in this cause by the first Monday of April next, or said bill will be taken as confessed.

JULY 10, 1862.

This day came the complainant's counsel, and on his motion and cause shown, it is ordered by the court that the time for taking testimony be extended to the first day of December next.

JULY 14TH, 1862.

This day came the defendants, by their solicitor, and filed their answer to the amended bill, as follows:

138 United States District Court for the district of Wisconsin.

Answer to amended bill.

THE ROCK ISLAND BANK
vs.
SETH H. MANN & MARY H. MANN.

The answer of the defendants Seth H. Mann & Mary H. Mann to the amended bill of complaint of the Rock Island Bank, complainant, against these defendants.

These defendants now, and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of excep-

tion which can or may be had or taken to the many errors, uncertainties and imperfections in the said complainant's amended bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material or necessary for them to make answer unto, they answer and say:

1. That they now are, and have been husband and wife since the sixth day of September, 1830.

2. That about the month of August, 1852, but at what precise day these defendants are unable to state, the defendant, Seth H. Mann, went to Rock Island, in the State of Illinois, to take charge of

139 the Rock Island Bank as its cashier, and that about the 1st day of November thereafter, this defendant, Mary H. Mann, removed to Rock Island from the said State of Wisconsin with the family of the defendant, Seth H. Mann. That at the times aforesaid the defendant, Seth H. Mann, was poor, and had no property of value, real or personal. That this defendant, Mary H. Mann, was, at that time, the equitable owner of certain real estate in the town of Beloit, in the county of Rock, and State of Wisconsin, described as lot Nos. 1 and 2 in block No. 11, in Beloit, according to a plat and survey made by John Hopkins, with the buildings and improvements thereon; that the same was then worth the sum of three thousand dollars, and was held under a contract of sale, upon which there remained unpaid the sum of six hundred dollars.

That in addition thereto, this defendant, Mary H. Mann, then held and owned in her own right, exclusive of furniture, &c., money and securities, for the payment of money to the amount of four thousand dollars, or about that sum.

That the property then held and owned by the said Mary H. Mann, so far as these defendants are now able to state, was acquired in the following manner:

That on or about the 28th day of March, 1849, one Amos

140 Holbrook, the brother of this defendant, Mary H. Mann, purchased of one John G. Stockley, of Cleveland, in the State of Ohio, the undivided one-quarter part of a certain piece and lot connected therewith in Cleveland, Ohio, for the benefit of this defendant, Mary H. Mann, and on the same day the said Amos Holbrook assigned all his interest therein to Luther Holbrook, the father of this defendant, Mary H. Mann, in trust for her use and benefit.

That no part of the purchase money of said pier and lots was paid by this defendant, Seth H. Mann, directly or indirectly, nor was he ever in any way or manner, beneficially interested therein, or in the avails thereof.

That on or about the 30th day of November, 1850, the said Luther Holbrook, by and with the consent of this defendant, Mary H. Mann, sold the said property so held in trust by him to one H. Camp, of Cleveland in the State of Ohio, for the sum of three thousand dollars over and above the amount assumed and agreed to be paid by said Amos Holbrook as the purchase price thereof, and over and above all other charges, costs, and expenses relating thereto; and that said three thousand dollars was all paid over to this defendant,

Mary H. Mann, about the first day of January, 1851, and that the same, and the avails thereof, formed a portion of the property
141 so held and owned by her at the time of removal to Rock Island, as is hereinbefore stated.

That about the month of July, 1846, one Ancel St. John furnished the capital stock and money necessary to organize a certain bank in Cleveland, in the State of Ohio, called and known as the Canal Bank, and employed this defendant, S. H. Mann, as its cashier, at a salary of fifteen hundred dollars a year; that about the year 1848, the said St. John sold the charter and franchise of said bank to one Hewit, and the assetts of this bank were purchased by this defendant, Mary H. Mann, from said St. John, for the sum of two thousand one hundred dollars; that the entire purchase money had been paid out of the assetts of said bank so purchased from said St. John and the said Mary H. Mann at the time she removed to Rock Island, had received in addition thereto from such purchase the sum of fourteen hundred dollars, or thereabouts; and that after she removed to Rock Island she received from the proceeds of said purchase the further sum of six hundred dollars, or about that sum; and that at the time she so removed to Rock Island the assetts of said bank so purchased by her of said St. John, and the money received therefrom, or the avails thereof, constituted and formed a part of the property then owned by her, as is hereinbefore stated.

That on the second day of October, 1842, this defendant,
142 Seth H. Mann, had become, and then was indebted to Mrs. Eliza Dickinson, of the city of Syracuse, in the State of New York, in the sum of one thousand six hundred and eighteen dollars and sixty-five cents, for money of the said Eliza Dickinson before then received by this defendant, Seth H. Mann, out of the estate of James Mann, deceased, and which sum the said Eliza Dickinson was then entitled to as an heir-at-law of the said James Mann, decessed.

That in order to secure the payment thereof to said Eliza Dickinson, this defendant, Seth H. Mann, on the second day of October, 1842, made and executed his note under seal, bearing date on that day, and delivered the same to the said Eliza Dickinson, wherein and whereby, on demand for value received, he promised to pay to said Eliza Dickinson, or order, sixteen hundred eighteen and 65-100 dollars, with semi-annual interest until paid.

That afterwards and on the twenty-first day of March, 1851, the said note was wholly unpaid and unsatisfied; the said Eliza Dickinson then being the owner and holder thereof, and entitled to the money due and payable thereon, by an instrument in writing on the back of the said note signed by her, gave, assigned, transferred, and set over the said note unto Stephen A. Dennis, then of the city of New York, in trust for the sole use and benefit of this defendant,
143 Mary H. Mann, and that said note, with the said assignment thereon endorsed, was delivered to said Stephen A. Dennis by said Eliza Dickinson, in trust, however, for the use and benefit of this defendant, Mary H. Mann.

These defendants, the said Seth H. Mann, of his own knowledge,

and the said Mary H. Mann, upon information and belief, further answering, state, that at the time the said note was so assigned and transferred to said Stephen A. Dennis, the whole amount of principal and interest to be due thereon was actually and equitably due and payable by this defendant, Seth H. Mann, and that the said assignment was so made by said Eliza Dickinson without any consideration being paid therefor by this defendant, Seth H. Mann, to said Eliza Dickinson, directly or indirectly, but that the said assignment was made by the said Eliza Dickinson as a free and voluntary gift to this defendant, Mary H. Mann.

These defendants further answering state, that afterwards, and on or about the first day of April, 1851, the said note then being and remaining wholly unpaid and unsatisfied, this defendant, Seth H. Mann, paid over to the said Stephen A. Dennis the amount due thereon for principal and interest, and took up the said note; and the said
144 Dennis, sometime thereafter, but at what precise time they are now unable to state, paid the same over to this defendant, Mary H. Mann, for her own use and benefit, and that at the time of her removal to Rock Island, the proceeds of the said note, or some part thereof, or the avails thereof, formed a portion of the property then held and owned by her, as hereinbefore stated.

And these defendants further answering state, that all the moneys and property above specified were so held by this defendant, Mary H. Mann, in her own right, without any interest therein, or claim thereon, by or on the part of this defendant, Seth H. Mann.

These defendants further answering state, that this defendant, Mary H. Mann, at the time of her marriage with the defendant, Seth H. Mann, held and owned personal property, consisting mostly of wearing apparel and household furniture, of the probable value of five or six hundred dollars, but the precise nature, description, or value thereof, they are unable to set forth.

These defendants further answering state, that they were married at the village of Whitesboro', in the county of Oneida and State of New York, on the 6th day of September, 1830.

These defendants further answering state, that while they
145 resided at Rock Island, in the State of Illinois, the defendant, Mary H. Mann, received five hundred dollars of stock dividend upon fifteen shares of the capital stock in the Rock Island Bank;

That in addition thereto, she received while at Rock Island aforesaid two thousand dollars in cash, for dividends upon one hundred shares of stock in the Rock Island Bank, which was held in the name of Marcus B. Osborn, but for the use and benefit of this defendant, Mary H. Mann; that fifteen shares of said stock were issued for her benefit, in consideration of fifteen hundred dollars paid by her out of her own money, at or about the time the said bank was organized, and before it went into operation; that five hundred dollars thereof consisted of stock dividend on said fifteen shares of said stock; that eighty shares, or eight thousand dollars, of said stock, was purchased and paid for by said Marcus B. Osborn; that all of said stock

stood in the name of said Osborn, but was held by him for the benefit of this defendant, Mary H. Mann, subject, however, to the payment of the sum of eight thousand dollars and interest thereon, being money borrowed by said Osborn to pay the purchase price of the said eighty shares of stock, and as security, for which the said one hundred shares, or ten thousand dollars, of stock had been pledged by said Osborn;

146 That on or about the 9th day of August, 1856, this defendant, Mary H. Mann, received by gift from her son, James C. Mann, a deed of conveyance of fourteen and one-half acres of land in the city of Beloit, in the State of Wisconsin, upon which the house and buildings now occupied by these defendants are erected, and that she still owns the same; that said premises were purchased and paid for by said James C. Mann, out of his own means, and that this defendant, Seth H. Mann, paid no part or portion of the purchase money thereof, directly or indirectly.

These defendants further answering state, that on or about the 6th of September, 1860, this defendant, Mary H. Mann, was indebted to Mrs. Chillana O'Connor for money borrowed of said Chillana, and for the security of the payment of which money, with interest thereon at ten per cent. per annum, the said Chillana O'Connor held the notes of this defendant, Mary H. Mann, secured by mortgages upon said fourteen and one-half acres of land;

That on or about the 6th day of September, 1860, the said Chillana O'Connor sold, assigned, and transferred the said notes and mortgages to one John M. Keep, now deceased; that at the time of such assignment there was due and unpaid on said notes and mortgages the sum of five thousand dollars, or about that sum;

147 That after the said John M. Keep received the said assignment, as a condition for an extension of time of payment of the moneys secured by said notes and mortgages, the said John M. Keep required this defendant, Mary H. Mann, to give other and further security for the amount due thereon; and thereupon these defendants made and executed a note for five thousand dollars, payable on the 1st day of January, 1866, with semi-annual interest, at ten per cent., and payable to one Martin Merrick, and to secure the payment thereof these defendants made and executed an indenture of mortgage to said Martin Merrick, to secure the payment of said note, and as collateral thereto, which mortgage was and is upon fifty-five acres of land, more or less, owned by this defendant, Mary H. Mann, in the city of Beloit aforesaid, and in the town of Turtle, and being all the real estate owned or occupied by her in said city and town;

That the said notes and mortgages assigned by the said Chillana O'Connor to said John M. Keep are still unpaid and unsatisfied, and that the said note and mortgage so made and executed to said Martin Merrick are collateral to, and made and intended as a further security for, the payment of the amounts due and unpaid on said first described notes and mortgages, and for the purpose of obtaining further time for the payment of the same;

That this defendant, Mary H. Mann, while she resided at Rock Island as aforesaid, received about six hundred dollars for the
148 rent of said house and premises in the city of Beloit, described as lots one and two, in block eleven, in Beloit, according to Hopkins' survey;

That since she removed to the city of Beloit from Rock Island, in the year 1856, this defendant, Mary H. Mann, has received and realized about the sum of eight thousand dollars for interest upon State stocks or bonds pledged with the bank controller of the State of Wisconsin, as security for the redemption of the circulating notes of the Oakwood Bank, over and above the amount paid for taxes, and the current expenses of carrying on and managing the said bank;

That all the stock in the Rock Island Bank held for this defendant, Mary H. Mann, by said M. B. Osborn, was surrendered to the Rock Island Bank, in part payment of the amount due on a contract between the complainant and James C. Mann, for the purchase of the Oakwood Bank; that in addition thereto, she paid about the sum of four thousand dollars, principal and interest, as the purchase price of forty shares of the capital stock in the Rock Island Bank, purchased in the spring of the year 1856, and transferred to the complainant in part payment of the purchase price of said Oakwood Bank, under said contract between said complainant and said James C. Mann;

That the sum of three thousand dollars or thereabout has
149 been expended by her in the purchase of State stocks or bonds, as further security for the redemption of circulating notes of the Oakwood Bank, upon calls made by the bank controller, and which sum is not embraced or included as a part of the current expenses of said Oakwood Bank;

That this defendant, Mary H. Mann, has erected a barn, and made other improvements upon the premises described in complainant's amended bill of complaint, (exclusive of the dwelling house erected thereon,) for which she has paid the sum of fifteen hundred dollars and upwards;

That this defendant, Mary H. Mann, on or about the 1st day of December, 1856, purchased of one S. S. Johnson thirty-two acres of land or thereabouts, part of the premises described in said amended bill of complaint, at the sum of seven thousand dollars; that in payment of four thousand dollars of the purchase money thereof, this defendant, Mary H. Mann, sold and transferred to said Johnson the house and lots hereinbefore mentioned and described as lots Nos. 1 and 2, in block 11, in Beloit, according to Hopkins' survey, and that she has since paid upon and towards the purchase money of said premises so purchased of said Johnson, exclusive of interest, the sum of two thousand dollars or thereabout; and that there still remains unpaid upon and towards the purchase money of the said thirty-two acres the sum of one thousand dollars or thereabout;

That she has purchased of D. J. Bundy and Hazen Cheney
150 about eight acres of land, part of the land held and occupied by her, the same being partly in the city of Beloit and town of

Turtle, for which she has paid, exclusion of interest, the sum of seven hundred dollars and upwards, but the precise amount these defendants are now unable to state; that she has erected a house on the premises described in the said amended bill of complaint, at an expense of four thousand two hundred and fifty dollars, or thereabout; that she has paid of sum about the sum of seventeen hundred dollars, and that there still remains due and unpaid to different persons for money, labor and materials, used and employed in and about the construction and building of said house, the sum of three thousand dollars and over, principal and interest.

These defendants, further answering, state that no part of the money so paid or expended by her, as hereinbefore stated, were received by the defendant, Mary H. Mann, from this defendant, Seth H. Mann, and that the said Seth H. Mann did not, in any way or manner, directly or indirectly, furnish any part thereof out of his own means, or out of the twenty thousand dollars received by this defendant, Seth H. Mann, from one Burr Higgins; and the said twenty thousand dollars was not used, nor was any part thereof, or of the avails or proceeds thereof, used directly or indirectly

151 in making any part of the said payments above mentioned, nor in the purchase of the said lands, or in the improvements thereon, or any part thereof.

These defendants, further answering, admit that the complainant is a banking corporation organized under general banking laws of the State of Illinois; that it has been such corporation since about the first day of July, 1852; that this defendant, Seth H. Mann, was its cashier from the time of its organization until about the twentieth day of June, 1856, but that he continued to act as its cashier until the seventh day of July, 1856; that during the time he acted as cashier of the complaint he has an annual salary of fifteen hundred dollars.

These defendants, further answering as aforesaid, admit that during the time this defendant, Seth H. Mann, acted as complainant's cashier, he had the general management, supervision, and control of the business of the complainant, but that such management, supervision and control was exercised under the immediate supervision of M. B. Osborn, its president, and subject also to the general supervision of the board of directors of the said complainant, and that the power and authority of this defendant, Seth H. Mann, as such cashier, was held and exercised in subordination to the power and authority of the said M. B. Osborn, president of said complainant,

152 and its said board of directors, or either of them, in relation to the business of said complainant.

These defendants, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, further answering, admit that about the month of October, 1854, this defendant, Seth H. Mann, then being the cashier of the complainant, made and entered into a contract with the Manufacturers and Mechanics' Bank of Columbus, Georgia, in the name and as the agent of said M. B. Osborn, but for the benefit of the said

complainant, which contract was in writing; and that at the same time he loaned or advanced to the said Manufacturers & Mechanics' Bank the sum of thirty thousand dollars of the funds of the said complainant, and took therefor three drafts, as stated in said amended bill of complaint, and as collateral security for the payment of the said drafts, took and received of the bills of said Manufacturers and Mechanics' Bank thirty-eight thousand dollars of the denominations of 20s, 50s and 100s; and these defendants, answering as aforesaid, further state that immediately upon the return of this defendant, Seth H. Mann, to Rock Island, the said written contract was placed, with other papers of like character, in complainant's vault, and the said drafts and said thirty-eight thousand dollars in bank bills were deposited by him, for collection, in the banking office of Anthony Lane, in New York, the agent of the complainant, and were

153 the property of the said complainant.

These defendants, further answering, deny upon information and belief that the said Manufacturers and Mechanics' Bank of Georgia, at the time said contract was made, was a banking corporation existing and doing business under and by virtue of the laws of the State of Georgia; and upon the contrary thereof, these defendants state upon information and belief that the said Manufacturers and Mechanics' Bank was never duly organized under the laws of the State of Georgia, and that it never had any right, power or authority to issue circulating notes, and that all notes of the said bank, then or thereafter issued, were void and of no value or no validity whatever.

These defendants, further answering, admit that in the month of January, 1855, the said Manufacturers and Mechanics' Bank had not fulfilled its said written agreement with said M. B. Osborn, and had not repaid to the said complainant the said thirty thousand dollars; that this defendant, Seth H. Mann, went to New York to obtain payment or security for the said thirty thousand dollars, but they deny, the said Seth H. of his own knowledge, and the said Mary H. upon information and belief, that said Osborn was not satisfied with the said written contract, but on the contrary thereof, that he was well satisfied and pleased with it; and they also, in like manner, deny that on the 2d day of January, 1855, or at any other time,

154 this defendant, Seth H. Mann, returned the said thirty-eight thousand dollars in bills to the said Manufacturers and Mechanics' Bank, or that said bank took back from him the said thirty-eight thousand dollars in bills, and gave and delivered to him in the place and stead thereof twenty thousand dollars in other bills of the said last-named bank, as stated in said complainant's amended bill of complaint; and they also deny that said twenty thousand dollars in bills were taken or received upon any other or different terms or conditions than as is hereinafter stated and set forth; and they also, in like manner, deny that it ever became or was the duty of this defendant, Seth H. Mann, to deliver the said twenty thousand dollars in the bills of the said Manufacturers and Mechanics' Bank to the said complainant.

These defendants, further answering as aforesaid, deny that this defendant, Seth H. Mann, concealed from the said complainant that he had received the said twenty thousand dollars of the bills of said Manufacturers and Mechanics' Bank; but on the contrary thereof, this defendant, Seth H. Mann, immediately upon his return to Rock Island, informed the said M. B. Osborn, the president of the complainant, of the fact that he had received the said twenty thousand dollars, and of the contract under which he had so received the same, and he also informed the said complainant as to the disposi-
155 tion he had made of the said thirty-eight thousand dollars, as is hereinafter stated.

These defendants, further answering, the said Seth H. Mann, of his own knowledge, and the said Mary H., upon information and belief, state that about the 1st day of January, 1855, this defendant, Seth H. Mann, with the knowledge and approval of the said M. B. Osborn, president of said complainant, went from Rock Island aforesaid to the city of New York for the purpose of obtaining payment or security for the payment of the thirty thousand dollars so loaned to the Manufacturers and Mechanics' Bank, as hereinbefore stated. That previous to the time this defendant, S. H. Mann, left Rock Island as aforesaid, the said M. B. Osborn revoked the authority or power of attorney before then given to this defendant as hereinbefore stated, and directed this defendant, S. H. Mann, not to make any new contract or agreement in the name of said M. B. Osborn, and not to alter or modify the contract before then made in the name of said Osborn; that at the time aforesaid, the said Manufacturers and Mechanics' Bank had failed and neglected to perform or fulfil any of the stipulations contained in the contract so made with said Osborn, and the same had become forfeited, and the said Osborn was no longer bound thereby, or in any way liable thereon, and the said Osborn directed this defendant, S. H. Mann,
156 not to make any other or further contract or agreement with the said Manufacturers and Mechanics' Bank, its officers or agents, upon which he, the said Osborn, should in any way become personally liable.

These defendants further answering as aforesaid state, that soon after the arrival of the defendant S. H. Mann in New York, in the month of January, 1855, he was informed by one Burr Higgins that he had made a contract to purchase all the stock, property, and franchise of the said the Manufacturers and Mechanics' Bank, for which he, the said Higgins, had assumed and agreed to pay a bonus of thirty thousand dollars, and the said Higgins had and held in his possession circulating notes of said bank, signed by its officers to a considerable amount, but to what amount these defendants are unable to state.

These defendants answering in manner aforesaid further state, that said Burr Higgins proposed and offered to sell to this defendant, S. H. Mann and to one William B. Hotchkiss, an interest in his said purchase, and to divide among them the circulating notes or issues of said bank in proportion to the amount of stock or interest to be held and owned by each of them respectively.

These defendants further answering in manner aforesaid
157 state, that afterwards, and on or about the 13th day of January, A. D. 1855, this defendant, S. H. Mann, and said Burr Higgins, and William B. Hotchkiss, made and entered into articles of agreement for the purchase, by this defendant and said William B. Hotchkiss, of an interest in said bank; one part of which said agreement is now in the possession of this defendant S. H. Mann, ready to be produced and proved as this court shall direct, a copy of which is hereto annexed marked and numbered Schedule No. 1, and which these defendants make a part of this their answer.

These defendants answering as aforesaid further state, that at the time the said contract or agreement was made and entered into, the said Seth H. had no power or authority to make and enter into the same for or on behalf of the said complainant or said M. B. Osborn, or any other person; but that the same was made on his own individual account and responsibility and at his own risk and for his own benefit, if any there should be resulting therefrom.

These defendants further answering as aforesaid state, that afterwards, and on or about the 22d day of January, 1855, this defendant, S. H. Mann, and said William B. Hotchkiss and Burr Higgins, agreed
upon and signed "by-laws of stockholders" in the said Man-
158 ufacturers and Mechanics' Bank, which by-laws were signed by them respectively in three parts, one part of which, signed by this defendant, Seth H. Mann, Burr Higgins, and William B. Hotchkiss is now in the possession of this defendant, S. H. Mann, ready to be produced and proved as this honorable court shall direct, a copy of which is hereto annexed marked Schedule No. 2, and which these defendants make a part of this their answer.

These defendants further answering as aforesaid state, that afterwards and on or about the 22nd day of January, 1855, and immediately or very soon after the said by-laws were signed, as above stated, the said Burr Higgins paid over to this defendant, Seth H. Mann, twenty thousand dollars of thecirculating notes of said Manufacturers and Mechanics' Bank, in pursuance of the terms and conditions of said contract, and of said by-laws; and this defendant, Seth H. Mann, thereupon gave to said Burr Higgins a receipt for said twenty thousand dollars, a copy of which is hereto annexed marked Schedule No. 3, and which these defendants make a part of this their answer.

These defendants answering as aforesaid further state, that afterwards and on or about the 13th day of March, 1855, this defendant, S. H. Mann, made and concluded an agreement with one Charles A. Wheaton, of Syracuse, in the State of New York, for the sale to the
159 said Wheaton of the one-third part of his interest in said Manufacturers and Mechanics' Bank, so purchased by him of said Burr Higgins, which said agreement with said Charles A. Wheaton is now in the possession of this defendant, Seth H. Mann, ready to be produced and proved as this honorable court shall direct, a copy of which is hereto annexed marked Schedule No. 4, and which these defendants make a part of this their answer; and that after the said sale to said Charles A. Wheaton, the by-laws of said Manufacturers

and Mechanics' Bank were modified and altered so as to enable said Wheaton to circulate bills of the said Manufacturers and Mechanics' Bank in some of the southern States, a copy of which amendment and alterations of said by-laws is hereto annexed marked Schedule No. 5, and which these defendants make a part of this their answer.

These defendants answering as aforesaid further state, that afterwards, and on or about the 24th day of March, 1855, and for the purpose of securing the payment of the money assumed and agreed to be paid on said contract between this defendant, Seth H. Mann, and said Burr Higgins and William B. Hotchkiss, this defendant, S. H. Mann, made and executed his own four promissory notes to the amount in all of eleven thousand six hundred dollars, and de-
160 livered the same to one William H. Hunt, the former owner of the said Manufacturers and Mechanics' Bank, from whom the same had been purchased by said Burr Higgins, and at the same time he, the said S. H. Mann, endorsed and agreed to pay a note of Burr Higgins, dated on or about the 6th day of January, 1855, for the sum of three thousand and four hundred dollars, and he also assumed and agreed to pay a debt due to the Camden Bank of the State of New York of about three thousand dollars, making in all the sum of eighteen thousand dollars which this defendant, S. H. Mann, assumed and agreed to pay, the same being three-fifths of the bonus agreed to be paid by said Burr Higgins, said William H. Hunt, upon the purchase of said Manufacturers and Mechanics' Bank.

These defendants further answering as aforesaid state, that all of said notes so given by this defendant, Seth H. Mann, and the whole of said indebtedness so assumed by him remains unpaid, and he, the said Seth H. Mann, is still liable thereon to the amount of eighteen thousand dollars with interest, and that the said complainant has never assumed or offered to assume or pay any of said liabilities or to relieve this defendant therefrom.

Nor did the said complainant ever claim or pretend that it
161 had any right or interest in or to the said sum of twenty thousand dollars so received by this defendant Seth H. Mann from said Burr Higgins, until about the 8th day of October, 1859.

These defendants answering as aforesaid further state, that at the time the said sum of twenty thousand dollars was so paid over by said Burr Higgins to this defendant, Seth H. Mann, the said contract so made with the said M. B. Osborn had been entirely given up and abandoned, and that at that time and for a long time thereafter no negotiations were pending referring in any way to the use by the complainant of the bills of said Manufacturers and Mechanics' Bank; and that the proposition which resulted in the making of the contract described in the complainant's amended bill of complaint, dated August 8th, 1855, a copy of which is "Exhibit No. 2," annexed to said amended bill, was first made about the 30th day of March, 1855, and that the terms and conditions of said contract were substantially agreed upon about the 12th day of April, 1855, and that afterwards, and on or about the 8th day of August, 1855, the said contract with, certain alterations agreed upon, was drawn up and signed.

These defendants, the said Seth H. Mann, of his own knowledge, and the said Mary H., upon information and belief, further answering, state that at the time he made and entered into
162 the said contract with the said Burr Higgins, as hereinbefore stated, the said Burr Higgins had not obtained the possession of the banking office and papers belonging to the said Manufacturers and Mechanics' Bank, and that the old officers of said bank were then in possession thereof, and refusing to surrender the same or to resign, and that the said Burr Higgins was then about to go to Columbus, in the said State of Georgia, for the purpose of obtaining the custody of the said banking office and appurtenances and the full control of the said bank, and that said Higgins desired the said drafts for thirty thousand dollars and said thirty-eight thousand dollars of bills, to be used by him, if necessary, as a means to enable him to get such possession and control of the said banking office and its appurtenances; and thereupon, at the request of the said Higgins, this defendant, Seth H. Mann, delivered the said thirty-eight thousand dollars in bills and said drafts for the purpose aforesaid, and for the further purpose of enabling the said Higgins to obtain payment from the said Manufacturers and Mechanics' Bank of the said sum of thirty thousand dollars so loaned to it by the complainant, as is hereinbefore stated and set forth; that afterwards and about the 30th day of March, 1855, the said Burr Higgins returned to this defendant, Seth H. Mann, the said drafts and the said thirty-eight thousand dollars of bills, and thereupon this defendant, S. H. Mann, delivered up to said Higgins his receipt for the same, which he, said Mann, had taken from
163 said Higgins, and soon thereafter the said drafts and said bills were delivered by this defendant, S. H. Mann, to one J. H. Fonda, as agent for the complainant, for the purpose of collecting the amount due on the said drafts, and the same were by the said Fonda taken to Columbus as aforesaid, and that afterwards, and after the making of the contract hereinafter mentioned, the amount due the complainant on said drafts was fully paid, satisfied, and discharged by moneys received by the said complainant from the said Manufacturers and Mechanics' Bank, and the said drafts and the said thirty-eight thousand dollars were thereupon surrendered and delivered up to the said Manufacturers and Mechanics' Bank, with the full knowledge and concurrence of the complainant.

These defendants further answering admit that after said 30th day of March, 1855, and before the first day of May, 1855, the defendant, S. H. Mann, and the said Burr Higgins, had negotiated in relation to a new contract, but they deny that such new contract or negotiation was made or intended to modify or change the provisions of the said contract numbered "Exhibit No. 1," and annexed to complainant's amended bill of complaint; and on the contrary thereof these defendants state in manner aforesaid that the said
164 Manufacturers and Mechanics' Bank at all times refused to alter or modify said first-described contract, or in any way or manner to perform and fulfill the the same beyond the provisions contained in the contract hereinafter mentioned, for the payment of the

amount due on the said drafts and interest thereon; they further answering as aforesaid, admit that said negotiations finally resulted in the making of the written contract dated August 8th, 1855, a copy of which is annexed to the complainant's amended bill of complaint, marked "Exhibit No. 2."

These defendants answering as aforesaid further state, that about the 1st day of May, 1855, and after the terms and conditions of the said contract between said Burr Higgins and this defendant, S. H. Mann, had been substantially agreed upon and settled, the said Manufacturers and Mechanics' Bank sent to this defendant, Seth H. Mann, twenty thousand dollars of their notes, and the same were placed with other funds of the complainant and used for its own use and benefit.

These defendants further answering admit that on or about the 8th day of August, 1855, this defendant, Seth H. Mann, went to New York to close the said contract, and then and there in his own name, but for the benefit of the complainant, made and executed the
165 contract, a copy of which is annexed to the complainants amended bill of complaint and numbered "Exhibit No. 2."

These defendants further answering as aforesaid deny that it was then and there agreed or understood between this defendant, Seth H. Mann, and the said Manufacturers and Mechanics' Bank, or that it was ever agreed between them, that the twenty thousand dollars in bills received by him from Burr Higgins as aforesaid should be considered and held to be any part of the money to be furnished to the complainant under said contract, and they also deny that the said Manufacturers and Mechanics' Bank, or any other person, persons or corporation, ever surrendered to this defendant, Seth H. Mann, the receipt which he had given to said Burr Higgins, a copy of which is annexed to said amended bill of complaint, numbered "Exhibit No. 3."

These defendants answering as aforesaid further state, that since these defendants removed to Beloit from Rock Island as aforesaid, and on or about the 7th day of August, 1856, the said Burr Higgins and J. H. Fonda, then the cashier of the said Manufacturers and Mechanics' Bank, called on the defendant, S. H. Mann, at
166 Beloit aforesaid, with the said receipt in their possession, and demanded from him a return of the bills therein mentioned, or payment thereon in other money, to the amount of twenty thousand dollars, and that since the said 7th day of August, 1856, he has been called upon by the agents of said Burr Higgins and others, claiming to be entitled thereto as the owners of said receipt, for the money therein referred to. That said receipt is still outstanding and existing and is a personal liability against this defendant, Seth H. Mann, and, as these defendants are informed and believe, the same is still held and owned by the said Burr Higgins or his assigns, and that the said complainant has never had or held the same, and has no right, title or interest therein, or claim thereto; and on the contrary thereof, these defendants answering as aforesaid further state, that the said receipt has never been surrendered to said Seth H. Mann,

or to any other person for his benefit, and the said Burr Higgins claims to own and hold the same, and he also claims and insists that this defendant, Seth H. Mann, is liable thereon to him for said twenty thousand dollars.

These defendants further answering, the said Seth H. Mann
167 of his own knowledge, and the said Mary H. upon information and belief, deny that the said Manufacturers and Mechanics' Bank never caused but one hundred and ten thousand dollars of said bills to be struck off from the plate aforesaid, and they also in manner aforesaid deny that said twenty thousand dollars was delivered to this defendant, Seth H. Mann, on the 22nd day of January, 1855, as stated in the said amended bill of complaint; and on the contrary thereof that the said Manufacturers and Mechanics' Bank caused to be struck off and printed from said plate one hundred and eighty thousand dollars; and they further answering as aforesaid deny that it was expressly agreed and understood by and between said Manufacturers and Mechanics' Bank and this defendant, Seth H. Mann, that the said twenty thousand dollars received by him from said Burr Higgins, on the 22nd day of January, 1855, should be considered any part or portion of the bills of said bank to be furnished to the complainant under said contract dated August 8th, 1855.

These defendants, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, deny that the said Seth H. fraudulently concealed from the complainant the receipt by him of the said twenty thousand dollars on the 22nd day of January, 1855, and on the contrary thereof, the said Seth H. Mann,
168 immediately upon his return from New York to Rock Island, informed the said M. B. Osborn of the fact that he had received the same, and of the contract between him and the said Burr Higgins, under which he had so received the same.

These defendants further answering as aforesaid deny that on the 22nd day of January, 1855, he was in any way or manner authorized by the complainant to make and enter into the said contract with said Burr Higgins, under which he received the said twenty thousand dollars; and they further state that said contract and liabilities therein assumed by him, relating thereto, have never been assumed or adopted by said complainant; nor has the said complainant ever paid or offered to pay any of said liabilities, or to relieve him therefrom, and that he has no other indemnity against such liabilities beyond the said twenty thousand dollars; and they in like manner deny that the said complainant is in any way or manner bound by the said contract with the said Burr Higgins, or liable upon the notes or agreements entered into by this defendant, Seth H. Mann, as is herein before stated.

These defendants further answering state, that they are informed and believe that at the time said bills were issued no part of the capital stock of said Manufacturers and Mechanics' Bank had been paid in as required by law, but that said bills had been issued
169 in direct violation of the provisions of its charter; the same being an act of the legislature of the State of Georgia, enti-

tled "An act to incorporate a bank in the city of Columbus, to be called the Manufacturers and Mechanics' Bank of Columbus;" that the said bank, at the time this defendant received said twenty thousand dollars of said Burr Higgins, was wholly insolvent and unable to redeem its issues, and that said bills were and still are worthless and of no value; and they further state in manner aforesaid, that the capital stock of said bank has never been paid in as required by its charter, and that the said bills are not, and never have been, of any real value; but these defendants answering as aforesaid further state that on the 6th day of June, 1855, and until after the 8th day of August, 1855, the defendant, S. H. Mann, was informed and believed, that the capital stock of said bank had been paid in as required by law, and during all the time aforesaid, the defendant, Seth H. Mann, supposed and believed, that the bills of said Manufacturers and Mechanics' Bank were good for their nominal value.

170 These defendants, the said Seth H. Mann, answering as aforesaid further state, that there was upon each of the bills so received by him from said Burr Higgins a mark or marks by which it could be easily distinguished from the bills comprising the ninety thousand dollars paid over to the complainant by the Manufacturers and Mechanics' Bank upon the said contract of August 8th, 1855, and that the said bills were never mingled with the money or circulating notes of the complainant, and that the complainant never became liable for their redemption.

These defendants, the said Seth H. Mann, of his own knowledge, and the said Mary H. Mann, upon information and belief, further answering state, that after he received the said twenty thousand dollars in bills from said Burr Higgins, as hereinbefore stated, and at some time during the winter of 1855-'6, and a long time previously to the time this defendant ceased to act as the cashier of the complainant, he communicated to the board of directors of said complainant, at a regular meeting of said board, the fact that he had received the said twenty thousand dollars from said Burr Higgins, in the bills of said Manufacturers and Mechanics' Bank, and that they were then held subject to his control; and he also communicated to said board, fully and particularly, a statement of all the facts and circumstances under which he had received the same, and also

171 submitted to said board all the contracts, writing and memoranda relating in any way thereto, for its inspection and examination; and the same were submitted, by said board of directors, to George W. Pleasants, esq., the attorney of said complainant, and Hon. Ira O. Wilkinson, as counsel of said board; and the said board thereupon, with a full knowledge of all the facts and circumstances relating thereto, and after an examination of all the contracts and papers connected therewith, in the possession of this defendant, Seth H. Mann, and with the knowledge that he then held, and had under his control, all of the said twenty thousand dollars so received by him of said Burr Higgins; and under the advice of their said attorney and counsel, unanimously decided and determined that the said complainant had no right, title, interest or claim, in or to the said

twenty thousand dollars, or any part thereof; and the said board of directors also at the same time, or at a meeting of said board held very soon thereafter, decided and determined to have the ninety thousand dollars of the bills of the Manufacturers and Mechanics' Bank, which the complainant had received upon said contract, as hereinbefore stated, delivered over to William B. Hotchkiss, to be disposed of; and thereupon one of the directors of said board, at the request of said board, drew and prepared a contract by and between said Hotchkiss and this defendant, Seth H. Mann; and this
172 defendant, Seth H. Mann, then being the cashier of the complainant, signed the said contract for and on behalf of said complainant, by the direction of said board of directors, with said William B. Hotchkiss, a copy of which contract is hereto annexed, marked schedule No. 6, and which these defendants make a part of this their answer.

And these defendants answering as aforesaid further state, that at the same time this defendant, S. H. Mann, with the full knowledge and assent of the president, and one or more of the directors of said board, in his own name, and for his own benefit, made and entered into another contract with said William B. Hotchkiss for the disposal of the said twenty thousand dollars, which had been received as hereinbefore stated by him from said Burr Higgins, a copy of which contract, marked schedule No. 7, is hereto annexed, and which these defendants make a part of this their answer.

These defendants, further answering, state that she, the said Mary H. Mann, is seized of the fee, and holds fifty-five acres, more or less, of the land described in the said amended bill of complaint; but that there is contained and embraced in such description about thirteen acres of land to which she has no title, and in which she has no interest; that the land so held by her is subject to the
173 incumbrances hereinbefore mentioned, and was acquired in the manner and upon the consideration hereinbefore particularly stated.

These defendants, further answering, deny that the land so held by her, or any part thereof, was purchased or paid for with the said twenty thousand dollars, or the proceeds or avails thereof, or any part thereof; nor was the said twenty thousand dollars, or the avails thereof, or any part thereof, used or employed in the buildings or improvements made thereon.

And they deny that the title to said premises was conveyed to the defendant, Mary H. Mann, so that she could pretend to hold the same as her separate estate, for the purpose of enabling the defendant, Seth H., to conceal from the complainant the ownership of the said lands.

These defendants, further answering, the said Seth H., of his own knowledge, and the said Mary H., upon information and belief, state that the said Manufacturers and Mechanics' Bank advanced in all to the complainant, under the said contract of August 8th, 1855, ninety thousand dollars in its bills, and no other or further amount to the knowledge and belief of these defendants; that twenty thousand

dollars thereof was paid about the 1st day of May, 1855. That twenty-eight thousand dollars thereof was paid about the 8th
174 day of August, 1855, at the time the said contract was signed; and that forty-two thousand dollars thereof, being the balance of said ninety thousand dollars, was forwarded to the complainant by express before the 1st day of October, 1855, but the precise time these defendants are not now able to state. And all of said sums were placed among the funds and money of the complainant, as soon as received, except said twenty-eight thousand dollars, which was placed with other funds of complainant, immediately upon the return of the defendant, S. H. Mann, to Rock Island, from New York, in August, 1855.

These defendants, answering as aforesaid, further state that on or about the 6th day of June, 1855, and after the terms of said contract of August 8th had been agreed upon in substance, and after the said complainant had received twenty thousand dollars, and no more, of the one hundred and ten thousand dollars referred to in said contract, and more than four months after the return of this defendant, S. H. Mann, from the city of New York to Rock Island, in the winter of 1854-'5, this defendant, with the approval of the president and directors of the complainant, caused notice to be published in one or more of the public newspapers, in substance, as near as these defendants now recollect, that the complainant had made arrangements to use a limited amount of the issues of the Manufacturers and Mechanics' Bank of Columbus, Geogia, and would
175 receive the same on deposit or otherwise, in the same manner and on the same terms that said complainant received the issues of Ohio, Kentucky, Virginia, and Indiana banks; that these defendants have no copy of said notice so published in June, 1855, and are therefore unable to state the contents thereof more particularly.

These defendants, further answering upon information and belief, deny that the said notice made the said complainant legally liable for the amount of all the bills of said Manufacturers and Mechanics' Bank which should thereafter be put into circulation.

These defendants, the said Seth H. of his own knowledge, and the said Mary H. upon information and belief, further answering state, that the said twenty thousand dollars of bills received by him from said Burr Higgins were not disposed of by paying them out at the complainant's counter and mingling them with the ninety thousand dollars so paid to the complainant, as hereinbefore stated; and that after the making of said agreement between this defendant, Seth H. Mann, and William B. Hotchkiss, he disposed of a part of said twenty thousand dollars for his own use and benefit, and that he still holds a part thereof.

These defendants, further answering, state that they first
176 removed to Beloit about the 1st day of September, 1851; that the said Seth H. Mann was at that time, and at the time he removed to Rock Island, poor, and had no property, real or personal, of any value.

And these defendants pray to be herein dismissed with their costs and charges in this behalf most wrongfully sustained.

S. H. MANN.
MARY H. MANN.
S. J. TODD,
Sol. for Def't.
H. L. PALMER,
Of Counsel.

UNITED STATES OF AMERICA,
District of Wisconsin, County of Rock, ss:

On this 4th day of June, 1861, personally came before me Seth H. Mann and Mary H. Mann, who being by me severally duly sworn, did depose and say that they have read the foregoing answer subscribed by them and know the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters they believe it to be true.

W. C. SPALDING,
Commissioner, &c.

177 *Schedule No. 1.*

This agreement, made this thirteenth day of January, A. D. 1855, by and between Burr Higgins, of Jamaica, L. I., New York, and Seth H. Mann, of Rock Island, State of Illinois, and William B. Hotchkiss, of the city, county, and State of New York, witnesseth: That whereas said Higgins entered into and made a contract with William H. Hunt, of Columbus, Georgia, dated the 6th day of January, 1855, for the purchase of all the stock subscribed for in the Manufacturers and Mechanics' Bank of Columbus Georgia, together with its charter, privileges and franchises, (except thirty shares each in the names of Terry, Storm, Woodruff, and Ransom, directors thereof,) and stipulated and agreed to pay for said stock the sum of thirty thousand dollars as stated therein, and also further agreed to pay and surrender certain notes of indebtedness made by said Hunt and W. B. Storm, also a debt due the Rock Island Bank; a copy of which contract is hereto attached and made a part of this agreement:

Now, therefore, said Higgins, in consideration of the undertakings and obligations hereinafter mentioned and specified, and of the fulfillment thereof, hereby agrees to sell, release, and make over, and does sell, release, and make over to the said Seth H. Mann, for himself, his assigns or legal representatives forever, three-fifths of all his interests in the said purchase of stock, together with
178 three-fifths of all the rights, benefits, and privileges of the charter under which said stock was created.

And the said Mann hereby agrees in behalf of himself, his heirs, and assigns or legal representatives, to assume and pay three-fifths of said purchase money of thirty thousand dollars, agreeable to the

stipulations of the said contract, (hereto annexed,) or as the parties hereto shall hereafter agree; and also to pay and satisfy three-fifths of the paper given by said Storm and said Hunt in payment for the capital stock of said bank, and also three-fifths of the debt due the Rock Island Bank.

Said Higgins hereby further agrees to sell and assign to said Wm. B. Hotchkiss one-fifth of said purchase of stock, together with one-fifth of all the rights, benefits and privileges of the charter under which said stock was created; and the said Hotchkiss hereby agrees and binds himself, his heirs, and assigns or legal representatives, to assume and pay one-fifth of said purchase money of thirty thousand dollars, agreeable to the stipulations of the said contract, (hereto annexed,) or as the parties hereto shall hereafter agree; and also to pay and satisfy one-fifth of the paper given by said Storm and said Hunt in payment for the capital stock of said bank; and also one-fifth
179 of the debt due the Rock Island Bank.

Said Higgins further agrees to make transfers of said stock when he shall receive the transfer thereof from the said Hunt, according to the several interests therein specified, viz: three-fifths to said Seth H. Mann, and one-fifth to W. B. Hotchkiss, or to their heirs or assigns, reserving one-fifth part of the same to himself, the stock herein referred to being one-half of what the charter privileges authorize.

It is hereby further understood and agreed that the remaining stock to be subscribed for to fill the capital to a half million of dollars shall be divided, taken and controlled in the like proportion with the afore-mentioned, viz: Seth H. Mann, his heirs or assigns, three-fifths, Wm. B. Hotchkiss, his heirs or assigns, one-fifth, and Burr Higgins, his heirs or assigns, one-fifth.

And it is further agreed that articles of association shall hereafter be drawn up and entered into by the parties to this agreement, to be called by-laws of stockholders, fixing and setting off territory for each party in interest to occupy exclusively, or jointly, for circulation of bills, and also general rules for the redemption of said bills, and for holding, owning, or disposing of said stock interests.

(Signed) BURR HIGGINS.
S. H. MANN.
WM. B. HOTCHKISS.

In presence of—
S. B. HIGGINS.

180 *Schedule No. 2.*

It is hereby agreed by and between the parties hereto that the following shall be and constitute a part of the by-laws of the Manufacturers and Mechanics' Bank, of Columbus, Georgia.

The parties hereto do hereby jointly and severally agree that the territory which shall be occupied for circulating the bills or issues of said bank shall be set apart, and shall be strictly adhered to, as follows:

The boundary set apart for the exclusive use of the three-fifths to be

assigned to said Mann and his associates or assigns shall be bounded as follows, to wit, commencing at the northwest corner of the State of Pennsylvania, on Lake Erie, and running thence (along the west line of the State) south to its intersection with the Ohio river; thence along the channel of said river to Cairo, in Illinois; thence in a northerly direction along the Mississippi river to St. Louis, in Missouri; thence westwardly from St. Louis to St. Charles, on the Missouri river; thence up the Missouri river to its head waters, embracing the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, Iowa, and north Missouri, with all the territory north and west of them to the Canada line, except for a specified amount, to be agreed upon between said Mann and said Hotchkiss, to be used jointly in northwestern Ohio, and in St. Louis, and St. Clair county, in the State of Illinois.

The boundary set apart for the exclusive use and benefit of
181 the two-fifths interest shall be comprised in the States of Tennessee, North and South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, Arkansas, Texas, southern Missouri, and all the territory west of these last-named States. All the other territory and States not herein named are to be jointly occupied by the parties hereto.

Each party in interest agrees to observe, in strict good faith and fair dealing to the others, the division of territory thus described, and that each will carefully adhere to the limits or bounds of the territory thus allotted, without trespass or undue advantage; and it is expected of each party that he will take up, at rates current for his own, any circulation found within his prescribed limits or boundary which belongs to either of the other parts or parties, and to return the same to the nearest point of redemption known to said party, for redemption, or exchange for his own. Each party shall arrange to redeem in New York city, and at such other points as he, or they, may deem necessary for his, or their, interests, in order to protect the credit and redemption of said notes. Therefore, said Mann and his associates or assigns shall provide for the redemption of such notes or bills as he, or they, may or shall circulation in his, or their, own territory or otherwise, a sufficient fund in New York city, and also at all concentrating points and places of business in his, or their,
territory which he, or they, may deem for their interests so to
182 provide. So also, in like manner, said Hotchkiss shall do and provide in relation to and for the notes and bills he circulates. And said Higgins shall in like manner do and provide for in relation to the notes and bills he shall circulate. If either party shall fail to redeem his, or their, own circulation which the other party or parties may have or hold at any period of time, on a balance due longer than thirty days, or fail to take up said bills which rightfully belong to his portion or to that circulated by him, at his place of redemption in New York city, and suffers the same to be returned to the bank without satisfactory arrangements having been made to redeem the same at the bank, in such case then he, or they, shall forfeit all of his, or their, claim or claims to circulate any notes or

bills outside of the bank, and in future thereafter, insofar as relates to this or their privileges to use circulating notes of the bank, it shall thereafter belong to the stockholders in common and shall be used from the bank direct.

Neither party shall be entitled to receive any circulation or issues from the bank upon his, or their, share or shares of stock, until he, or they, shall make (or cause to be made) payment in money upon his stock, or theirs, as prescribed in the charter; which payment, be it more or less, will entitle the party making it to his, or their,
183 share of the bills or circulating notes of the bank, as provided for in said charter.

And neither party hereto, or their associates or assigns, shall do any act which can be construed into a known or open violation of any or all the provisions of the charter by which or under which it was organized, but, on the contrary, shall in every case comply fully therewith.

Each party, or parties, shall give to the bank a receipt for the circulating notes which he, or they, receive or shall receive under this arrangement from the said bank; and he, or they, shall pledge his, or their, stock as security, and make such other and further provisions as will protect and insure the redemption thereof, as herein provided.

Circulating notes, to be used by and set apart for said Mann and his associates or assigns, shall be printed from the plate which he designed and which was engraved by Danforth, Wright & Co., of New York city, and from such other plates as it may be necessary herefter for the bank to order for their use; and the circulating notes to be set apart for the use of the two-fifths interest of said Hotchkiss and said Higgins shall be those printed from the plates engraved by the house of Rawdon, Wright, Hatch & Eilson, so as that they may be easily distinguished from each other in regard to redemptions. Each party shall weekly on the last day of every week, or if accidentally
184 or necessarily omitted, then as soon thereafter as possible, state by letter addressed to the bank, postpaid, the sum of circulating notes on hand and unused, in order thereby to enable the cashier to make a general statement.

Monthly balance sheets, showing the condition of the bank, together with a statement of each party's circulation, and funds to redeem, shall be exchanged by the bank and the parties hereto.

Each party hereto shall pay to the bank on the circulating notes which he or they shall use and actually have in circulation, on an average, as shall appear by estimate at the end of each week, four per cent. interest per annum, on the first Mondays in June and in December, semi-annually.

The circulating notes used at and from the bank, necessarily taken from any one party's interest, shall be reported and stated at the end of each week, and the party or parties to whom they rightfully belong shall be credited by the bank at the rate of four per cent. per annum thereon, to be paid to said party or parties in the months of June and December as aforementioned, each year; the bank to re-

deem such notes or bills so used with its own funds in the bank. Neither party shall be at liberty to hypothecate any of the circulating bills of the bank, (which may at any time be in his hands,) for any purpose whatever; such hypothecation shall be deemed
185 an open violation of the agreement contained in these by-laws, regarding circulation, except in rare cases, where it may become necessary to hypothecate bills for a limited time to secure a prompt redemption of the notes of said bank.

The party or parties receiving such circulating notes shall hold them as the property of the bank as agent stockholder, when the same are not in circulation.

Of the capital stock paid in by the parties hereto, there shall always be kept on hand in legal coin at the bank, to protect redemptions thereat, five per cent., as nearly as may be, of the average circulation maintained, by the party or parties hereto, and the balance of the capital, so far as any party in interest who may have furnished it may desire it, shall be kept at the agency at New York city, under the control of said party or parties, to protect redemptions of said bills in that city; and whenever said funds in New York or in Columbus, or any part thereof, shall be used in redemption of said bills, the party or parties for whom such redemption, or any part thereof was made, shall, with all reasonable dispatch, pay into said agency or bank the amount so used on his behalf, so that the actual fund paid in as capital stock shall, as nearly as may be, always be kept on hand.

Any first-rate securities, convertible into cash on demand,
186 in New York city, in the hands of the agent of the bank and of the party or parties, shall be considered the same as cash on hand.

These by-laws may be altered or amended by a vote of three-fifths of the parties in interest, at a future meeting of stockholders in person or by proxy, which may by convened after sixty days' notice thereof has been given, either by publication in the gazettes of Columbus, Georgia, or by written or printed notice, sent to every stockholder by mail, post paid, addressed to each of said stockholders, at his reputed place of residence; provided, however, that such alterations or amendments may be made at any meeting of stockholders, convened at any time, by mutual consent (to such meeting) in writing of four-fifths of the parties in interest.

Burr Higgins shall be the president of said bank, and the financial officer thereof, with a salary (from the time he shall enter upon, and continue to discharge the duties of the office) of twenty-five hundred dollars per annum, payable quarterly on the first days of January, April, July, and October; the amount to be increased to three thousand dollars per annum, as soon as the extent and prosperity of the business of the bank will warrant such increase.

(Signed) BURR HIGGINS.
S. H. MANN.
WM. B. HOTCHKISS.

187 *Schedule No. 3.*

Received, New York, January 22d, 1855, from Burr Higgins, a package of the circulating notes of 1,000 sheets 5, 5, 5, 5, or $20,000, signed by the cashier and president of the Manufacturers and Mechanics' Bank of Columbus, Ga., for safe-keeping; and as collateral for the package of the notes of said bank for thirty-eight thousand dollars given to said Higgins on his receipt to collect therefrom, thirty thousand dollars and interest, or return; and when so collected or returned, I will return to him, or account for the value of the same, the package hereby receipted.

(Signed) S. H. MANN.

188 *Schedule No. 4.*

Whereas Burr Higgins, late of Jamaica, New York, has purchased about twenty-five hundred shares of the capital stock of the Manufacturers and Mechanics' Bank of Columbus, Georgia, of William H. Hunt, esq'r, of said Columbus;

And whereas said Higgins has gone to said Columbus and taken possession of said stock, which said stock is by articles of agreement between said Higgins and Wm. B. Hotchkiss, now of St. Louis, Mo., and the undersigned, S. H. Mann, divided into five shares of fifty thousand dollars each, of which said shares two are owned and controlled by said Higgins and said Hotchkiss, and the remaining three shares are sett off to and controlled by said S. H. Mann, his associates or assigns, as set forth in the by-laws agreed upon between the parties:

Now, therefore, in consideration of six thousand dollars to said Mann in hand paid, the receipt whereof is hereby acknowledged, and also of certain things hereinafter mentioned, to be done by Charles A. Wheaton, of Syracuse, N. Y., I, the said S. H. Mann, do hereby sell, assign, transfer, and set over, unto the said Wheaton, one share of fifty thousand dollars of said stock, subject to such payments as are required by the charter of said bank on unpaid stock.

The said Wheaton agrees, on his part, not only to conform to the requirements of the charter of said bank, but also to put into
189 circulation the bills issued upon one additional share of fifty thousand dollars of said stock, upon the line of the Blue ridge Railroad Company, running from Anderson, South Carolina, to Knoxville, Tennessee, for and on behalf of said Mann, or his assigns, which said bills are to be paid for by the note or notes of Ashburn, Birdsall & Company, and endorsed by said Charles A. Wheaton, and payable at the American Exchange Bank in New York, at three months after the date of delivery of any of said notes, without interest; which arrangement to circulate notes for said Mann is to be continued one year from the time seventy-five thousand dollars of said issues shall have been paid out for and on behalf of said Mann, or his assigns.

Dated Syracuse, March 13th, 1855.

Signed) S. H. MANN.
CHARLES A. WHEATON.

190 *Schedule No. 5.*

Whereas Burr Higgins, Wm. B. Hotchkiss, and S. H. Mann, did in January, 1855, in the city of New York, enter into a certain arrangement in regard to the use of the issues or notes of circulation of the Manufacturers and Mechanics' Bank of Columbus, Georgia, which said arrangement was reduced to writing and called "By-laws of stockholders;" and whereas the said S. H. Mann, the owner of the three-fifths interest mentioned in said by-laws, has sold to Charles A. Wheaton, esq., of Syracuse, N. Y., five hundred shares of said capital stock, or one-fifth interest, and as said Wheaton is interested in a contract for building a railroad running from Anderson, S. C., to Knoxville, Tenn., and may be hereafter interested in similar contracts elsewhere, it is important and desirable that said Wheaton should be permitted to pay out the kind of issues of said bank, which he may receive on his share, upon the line of said railroad or elsewhere in the Southern States:

Now, therefore, in consideration of the above facts, it is hereby agreed by four-fifths of the parties in interest, that said Wheaton, and the company with which he is connected, may freely pay out such issues upon the line of said road or elsewhere.

And further, the said parties in interest hereby agree to so alter said by-laws where they place the capital stock paid in by any
191 stockholder under the control of such stockholder, as to leave such capital under the control of the bank, but to be so managed by said bank as to keep the institution strong in New York city, and the funds applicable to redemptions in said city of the notes of said bank.

New York, March 27th, 1855.

(Signed) BURR HIGGINS.
S. H. MANN.

192 *Schedule No. 6.*

This memorandum of agreement made this 20th day of February, 1856, between Seth H. Mann, of Rock Island, Illinois, and Wm. B. Hotchkiss, of Saint Louis, Missouri, witnesseth: That the said parties for value received by each from the other, have entered into the following agreements and undertakings to wit: The said Seth H. Mann has this day loaned to said Hotchkiss the sum of eight thousand dollars in the circulating bills of the "Manufacturers and Mechanics' Bank of Columbus, Ga.," for which money the said Hotchkiss has given the note of "The Saint Clair Railroad and Coal Company," of Illinois, endorsed by himself, dated Feb'y 19, '56, at three months, payable at the Rock Island Bank, for the same amount, with ten first mortgage coupon bonds of said company, as collateral to sasd note.

And it is agreed by and between said parties, that whenever (during the time said paper has to run) said Hotchkiss shall pay or deliver to said Mann sums of money, or satisfactory paper for any amount not exceeding in the aggregate forty thousand dollars, he shall receive for the same an equal amount of said circulating bills; and when said

Hotchkiss shall have so delivered said money and paper to said Mann, to an amount not less than thirty-three thousand dollars (exclusive of all redemptions of the bills so paid out) and received the said circulating bills therefor, the said Mann shall then deliver to said Hotchkiss on demand a still further amount of said circulating bills sufficient to make up the sum of ninety thousand dollars in all,
193 and shall also deliver up to said Hotchkiss said note for eight thousand dollars, and the aforesaid ten bonds given as collateral.

The said Hotchkiss further agrees that in case he can use the amount of thirty-three thousand dollars as aforesaid, he, with the St. Clair Railroad and Coal Company, will guarantee the Rock Island Bank against any loss whatever in consequence of said bank guaranteeing the fulfillment of a contract between said Mann and said Manufacturers and Mechanics' Bank of Columbus, Ga., on the part of said Mann, which said contracts bears the date of August 8th, 1855.

And the said Hotchkiss further agrees that he will make all practicable efforts with said Manufacturers and Mechanics' Bank to procure the release of the aforesaid guarantee of said Rock Island Bank on said contract, by offering to assume, on the part of himself and said coal company, the said guarantee.

And said Hotchkiss further agrees to protect said Mann from his liability on the said contract, or from any loss by reason thereof, and to carry out all its provisions with said Manufacturers and Mechanics' Bank on the part and behalf of said Mann, and at its termination to pay said bank as therein provided, to the amount of ninety thousand dollars.

And it is further mutually agreed that if said Hotchkiss shall find he cannot use said Georgia money, or that he cannot use the
194 amount of forty thousand dollars in a proper way, he may at any time making the trial return to said Mann the amount of said notes of eight thousand dollars in the circulating bills aforesaid, if done within three months of this date, and receive the said note and ten bonds on exchange for the same, and that then this agreement shall cease and be cancelled.

It is also understood and agreed, that as ninety thousand dollars is all that has been paid on the contract of August 8th, 1855, aforesaid, by said Manufacturers and Mechanics' Bank, the said Hotchkiss and Coal Company are only to account for that sum, from which is to be deducted the thirty-three thousand dollars loaned to said Manufacturers and Mechanics' Bank as is in said contract mentioned.

Witness our hands the day and year first above written.

(Signed) S. H. MANN.
WM. B. HOTCHKISS,
By EDW'D M. MORGAN, *Att'y.*

In presence of—
E. LATHROP.

195 *Schedule No. 7.*

Having this day entered into a contract with Seth H. Mann, of Rock Island, Illinois, by which I have agreed to assume his liability on a contract between him and the Manufacturers and Mechanics' Bank of Columbus, Ga. I do hereby in consideration thereof, and of one dollar to me in hand paid by said Mann agree, that I will circulate and protect for said Mann, his heirs or assigns, the sum of twenty thousand dollars of the notes of the Manufacturers and Mechanics' Bank of Columbus, Ga., until the 15th day of October, 1860.

Dated Rock Island 20th February, 1856.

(Signed) WM. B. HOTCHKISS,
Per EDW'D M. MORGAN, *Att'y.*

In presence of—
E. LATHROP.

Transferred to Circuit Court of the United States for the district of Wisconsin.

The following proceedings were had in United States Circuit Court, after its organization.

196 THE ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN.

OCTOBER 1, 1862.

Transferred and continued from the District Court of the U. S. Chancery Docket L., page 30.

NOVEMBER 10, 1862.

Substitution of Mat. H. Carpenter as compl'ts' solicitor filed.

NOVEMBER 15, 1862.

This day came the complainant by its solicitor and filed its replication to the answer to the amended bill, as follows:

In Circuit Court of the United States for the 8th circuit and district of Wisconsin.

Replication.

THE ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN. } In equity.

The replication of the Rock Island Bank, complainant, to the joint and several answer of Seth H. Mann and Mary H. Mann, defendants, to the said complainants' original and amended bill of complaint.

This repliant. and saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the

said answer, for replication thereunto saith that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and unsufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true: All which matters
197 and things this repliant is, and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

MAT. H. CARPENTER,
Sol. and of Counsel for Compl't.

Docket entries.

APRIL 20, 1863.

This day came the complainant's counsel, Mr. Carpenter, and on his motion it is ordered by the court that the time for taking testimony be and hereby is extended until the first day of July next.

And same day (April 20, 1863,) came the complainant's solicitor and entered in the order and rule book a rule for a commission to issue to George W. Pleasants, esq., of Rock Island, Illinois, to take the testimony of William L. Lee and Isaac Negus, and filed interrogatories to be annexed to said commission.

MAY 5, 1863.

Commission issued to George W. Pleasants, esq., Rock Island, Ill.

MAY 11, 1863.

This day came the complainant's solicitor and entered in the order and rule book a rule for commissions to issue to George W. Pleasants, esq., of Rock Island, Illinois, and also to John Livingston, esq., of New York, to take the testimony of Marcus B. Osborn, and filed interrogatories to be annexed thereto.

MAY 15, 1863.

This day came the complainant's solicitor and entered in the order and rule book a rule for a commission to issue to Cyrus Bently, esq., of Chicago, Illinois, to take the testimony of Hernan Baldwin, of said city, and also filed interrogatories to be annexed to said commission.

And same day (May 15, 1863) entered a rule for a commission to issue to William S. Rockwell, esq., of Central City, Colorado
198 Territory, to take the testimony of J. H. Kinney and William L. Lee, and filed interrogatories to be annexed to said commission.

MAY 25, 1863.

Commissions issued to George W. Pleasants, esq., of Rock Island, Ills., and to John Livingston, esq., of New York, to take the testimony of Marcus B. Osborn.

MAY 27, 1863.

Commissions issued to Cyrus Bently, esq., of Chicago, Illinois, and to William S. Rockwell, esq., of Central City, Colorado Territory.

JUNE 23, 1863.

Depositions received from post office and filed.

JULY 8, 1863.

This day came the parties by their counsel, and by consent it is ordered by the court that the time for taking testimony be and hereby is extended to the first Monday of October next.

JULY 20, 1863.

Depositions received from post office and filed.

AUGUST 24, 1863.

Depositions received from post office and filed.

NOVEMBER 10, 1863.

This day came the complainant by its counsel, and on its motion it is ordered by the court that the time for taking testimony be and hereby is extended to the first Monday of January next. On like motion it is ordered by the court that this cause be and hereby is continued.

SEPTEMBER 9, 1864.

This day came the complainant by its solicitor, and entered a rule setting this cause down for hearing at the next term of court, as follows:

U. S. Circuit Court, dist. Wis.

Case set down for hearing.

ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN.

199 On motion of Mat. H. Carpenter, sol. for complainant, ordered: That this cause be set down for hearing, on bill, answer, replication and proofs.

MATT. H. CARPENTER,
Sol. for Compl't.

SEPTEMBER 28, 1864.

Depositions received from Mr. Bloodgood and filed.

And now at this same term, to wit: September term A. D. 1864, of said United States Circuit Court, and on the twenty-second day thereof, to wit, on the eighth day of October, A. D. 1864, the following proceedings were had, to wit:

Hearing, &c.

THE ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN.

This day came the complainant by its counsel, and on its motion it is ordered by the court that the depositions on file in this cause be, and the same are published.

And this cause came on to be heard upon the pleadings and proofs, the defendants not appearing, whereupon after consideration a final decree is made herein by the court, signed and enrolled.

Complainant's testimony.

200 UNITED STATES OF AMERICA, *District of Wisconsin, ss*:

The President of the United States of America, to Cyrus Bently, esq., Chicago, Ills., greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed and by these presence you, or any one or more of you, are invested with full power and authority to examine Heman Baldwin, on his corporal oath, as witness in a cause depending in the Circuit Court of the United States for the district of Wisconsin, wherein Rock Island Bank is complainant and Seth H. Mann and Mary H. Mann are defendants, on the part of the complainant, upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said Heman Baldwin to come before you and then and there examine him on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said Circuit Court of the United States before the judge thereof, with all convenient speed.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at the city of Milwaukee, in said district, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

[L. S.] J. M. MILLER, *Clerk.*

201 *Rules.*

On the receipt of the commission made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible, and if any of the commissioners are absent at the execution of said commission, any one, or more present, may proceed to execute the same, (unless otherwise expressly directed therein,) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same, as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission; that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be

reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness, proving the some. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party, or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial, separate from the commission.

Fourth. The commissioner, or commissioners, shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they, or he, shall immediately deposit the packet so directed in the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet, so directed, shall be delivered to said agent.

202 In Circuit Court of the United States for the 9th circuit and district of Wisconsin.

ROCK ISLAND BANK
vs.
SETH H. MANN & MARY H. MANN. } In equity.

Interrogatories to be propounded Heman Baldwin, esq'r, a witness to be produced, sworn and examined on behalf of said complainant, before Cyrus Bently, esq'r, commissioner:

1. Interrogatory. What is your name, age and place of residence?

2. Interrogatory. Do you know the defendants, Seth H. Mann and Mary H. Mann, or either of them; and if yea, how long have you known them respectively?

3. Interrogatory. Did you ever have an interview or inverviews with the said Seth H. Mann in regard to business of the Rock Island Bank; if yea, how many, where respectively, and when did it, or they, take place?

4. Interrogatory. If in answer to the last preceeding interrogatory you answer that you have had such interview or interviews with said Seth H. Mann, state here and now, fully, why and on whose behalf you held said interview or interviews, for whom you were acting, and state fully everything that took place and was said in said interview or interviews by you to said Seth, and by him to you, and by any other person or persons in your and Seth's presence, to which said Seth made any reply or allusion; state fully, separating the interviews if there were several, so as to show what was said in each interview apart from what was said in other interviews.

203 Last interrogatory. Do you know, or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

MAT. H. CARPENTER,
Sol. for Complainant.

204 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the Circuit Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file, and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-seventh.

[L. S.] J. M. MILLER, *Clerk.*

205 The deposition of Heman Baldwin, of the city of Chicago, county of Cook, and State of Illinois, a witness of lawful age, produced, sworn, and examined upon his corporal oath on the eighteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three, at the office of Cyrus Bently, in the city of Chicago, county, and State aforesaid, by me, a commissioner duly appointed by a dedimus protestatem or commission issued out of the clerk's office of the Circuit Court of the United States, district of Wisconsin, bearing teste, in the name of J. M. Miller, esq., clerk of said court, with the seal of said court affixed thereto, and to me, as such commission directed for the examination of the said Heman Baldwin, a witness in a certain suit and matter in controversy now pending and undetermined in the said Circuit Court, wherein the Rock Island Bank is complainant, and Seth H. Mann and Mary H. Mann are defendants, in behalf of the said complainant upon the interrogatories attached to said commission. The said Heman Baldwin being first duly sworn by me, Cyrus Bently, commissioner aforesaid, as a witness in said cause, previous to the commencement of his examination, to testify the truth, the whole truth, and nothing but the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said complainant and defendants, so far as he should be interrogated, testified, and deposed as follows:

Interrogatory first. What is your name, age, and place of residence?

Answer. My name is Heman Baldwin; my age is 48 years, and my place of residence is the city of Chicago, county of Cook, and State of Illinois.

Interrogatory second. Do you know the defendants, Seth H. Mann

and Mary H. Mann, or either of them; and if yea, how long have you known them respectively?

Answer. I know Seth H. Mann and Mary H. Mann. I have
206 known Seth H. some eight years, and Mary H. about five and a half years.

Interrogatory third. Did you ever have an interview or interviews with the said Seth H. Mann in regard to business of the Rock Island Bank; if yea, how many, where respectively, and when did it or they take place?

Answer. I have had interviews with Seth H. about the business of Rock Island Bank; seven interviews, all in Beloit, Wisconsin, two at his house, four at the hotel known as the Bushnell House, and one riding about the city of Beloit, in his buggy, with Mr. Mann. The first interview was at Mr. Mann's house in Beloit, on the 29th day of October, A. D. 1859; the second was on the thirty-first day of October, A. D. 1859, at the Bushnell House, and the third at the same place and day, and the fourth on the same day or the next day riding in Mann's buggy about Beloit; the fifth was on the 30th day of November, A. D. 1859, at Mr. Mann's house; the sixth was at the Bushnell House, in Beloit, in the forenoon of the first day of December, A. D. 1859, and the seventh was at the same place, in the afternoon of the same day. I think these dates are correct, without any variation.

Interrogatory fourth. If, in answer to the last preceding interrogatory, you answer that you have had such interview or interviews with said Seth H. Mann, state here and now fully why and on whose behalf you held said interview or interviews, for whom you were acting; and state fully everything that took place, and was said in said interview or interviews by you to said Seth, and by him to you, and by any other person or persons in your and said Seth's presence to which said Seth made any reply or allusion; state fully, separating the interviews, if there were several, so as to show what was said in each interview, apart from what was said in other interviews.

Answer. I held said interviews as the agent, and on behalf of the Rock Island Bank, and was acting for them only and exclusively
207 for the purpose of getting a settlement with Seth H. Mann, who, the bank claimed, had taken a large amount of their money. I stated to said Seth at the first interview, Oct 31, A. D. 1859, at his house, (no other person being present,) the object of my visit. Mann said he did not owe the bank anything, but stated that he knew the officers of the bank, and the stockholders in Hartford were down on him, and charged him with having used the funds of said bank for his own private use. I stated to him that the Rock Island Bank were well satisfied that he had managed in some way to defraud them out of twenty thousand dollars, of funds, on a contract with a bank in Georgia. I think it was the Manufacturers and Mechanics' Bank; that the Rock Island Bank furnished the Georgia Bank with thirty thousand dollars in money, and were to have ninety thousand dollars of the currency of the Georgia Bank, and that subsequently a new arrangement was made, as the contract showed, by

which the Rock Island Bank were to have one hundred and ten thousand dollars of circulation, in place of the ninety thousand dollars provided for in the previous contract, and that Mr. Mann had always told them that the Georgia Bank was short twenty thousand dollars, having furnished only ninety of the one hundred and ten thousand dollars; and I further stated to Mr. Mann that the Rock Island Bank informed me that the Georgia Bank had failed, and a Mr. Bolter, one of the stockholders of said Rock Island Bank, residing in Hartford, went to Georgia to get a settlement with said Georgia Bank, for the thirty thousand dollars advanced by the Rock Island Bank on the first agreement or contract, and that the bank in Georgia informed said Bolter that they had furnished the whole of the one hundred and ten thousand dollars; and I requested Mr. Mann to give me a full explanation of this matter. Mr. Mann said in reply that he made the arrangement with the Georgia Bank as the cashier of the Rock Island Bank, and himself paid over the thirty thousand dollars to
208 the Georgia Bank, according to their first contract, and the Rock Island Bank were to have the thirty thousand dollars paid back to them within a short time, (I think 60 and 90 days,) and the Rock Island Bank were to have ninety thousand dollars in currency of said Georgia Bank for circulation in the west, according to the contract; the Rock Island Bank were to protect said circulation by redeeming it, and were to pay the Georgia Bank a small rate of interest for it. He further stated that the Georgia Bank, after getting the thirty thousand dollars from him as cashier of the Rock Island Bank, had some trouble, and delays occurred, and they did not furnish the ninety thousand dollars of currency or any part of it, and finally he had to make a new arrangement with the Georgia Bank, and adding interest on the thirty thousand dollars for the time that had elapsed; the amount advanced by the Rock Island Bank was put at thirty-three thousand dollars, and the Rock Island Bank were to have one hundred and ten thousand dollars of circulation in place of the ninety thousand dollars specified in the first contract. He said further that the Georgia Bank had furnished ninety thousand of the one hundred and ten thousand dollars only, and they had never furnished any more, and were short twenty thousand dollars upon said contract. I asked Mr. Mann if he made both the agreements with the Georgia Bank. He said he did make them for the Rock Island Bank, but he had the first agreement or contract made in the name of Marcus Osborne, but Mr. Osborne objected to it, as it was made with him individually, and not as president of the Rock Island Bank. As the circulation was contracted for the Rock Island Bank, Mr. Osborn wanted the contract to run to the bank, and not to him, individually, and consequently the first contract referred to was never executed, although he, Mann, paid the thirty thousand
209 dollars to the Georgia Bank. The money was paid, because it was necessary the Georgia Bank should have it in order to start the bank. Mr. Mann stated that the second contract was made in his own name, but it was for the benefit of the Rock Island Bank. He said the thirty-three thousand dollars named in the last contract

was not a new loan, but was the original thirty thousand dollars advanced by the Rock Island Bank, together with three thousand dollars for interest. He said he had a private arrangement with Burr Higgins, the president of said Georgia Bank, and did receive from him twenty thousand dollars of currency of the same plate furnished to the Rock Island Bank, and that it was his own private business, which the Rock Island Bank had nothing to do with. This conversation was at Seth H. Mann's house, at our first interview, on Saturday, the 29th day of October, A. D. 1859.

On the following Monday morning, Oct. 31st, A. D. 1859, occurred our second interview, at the Bushnell House, in Beloit. In this interview I asked Mr. Mann if it was a fact that the Georgia Bank had struck off from the plate of four fives (five dollar notes) more than one hundred and ten thousand dollars, which had been engraved expressly for the circulation of one hundred and ten thousand dollars for the Rock Island Bank, as stated in the contract. He said they had not then. I asked him if the twenty thousand dollars he had of Burr Higgins, president of the Georgia Bank, was from said plate of four fives for the Rock Island Bank. He said they were. I then asked him if there was any mark on his twenty thousand dollars to distinguish them from the ninety thousand dollars of the Rock Island Bank's circulation, obtained from said Georgia Bank. He said there was none. I asked him how he could tell which was his or the Rock Island Bank's in the redemption of said currency. He said the redemption did not cost but a trifle. I asked him how it was possible
210 for him to have a private arrangement with Burr Higgins, the president of said Georgia Bank, and obtain for his own private use twenty thousand dollars of the Rock Island Bank currency struck off from a certain plate engraved expressly for the circulation of one hundred and ten thousand dollars, contracted to be furnished by the Georgia Bank to the Rock Island Bank, when the contract forbad the use of said one hundred and ten thousand dollars for any other purpose whatever, during the continuance of said contract; and if he had taken twenty thousand dollars of said currency he was liable to the Rock Island Bank for it. This was at about noon, and he left for dinner, promising to meet me in the afternoon. He came to the Bushnell House in the afternoon, and we held our—

Third interview: He then told me he purchased part of the said Georgia Bank after the first contract was made, for the ninety thousand dollars of circulation for the Rock Island Bank, and before the second contract was made for the one hundred and ten thousand dollars. He stated that the Rock Island Bank had no interest whatever in said purchase. He said he had a right to use as much currency or circulation as he pleased, struck off from said plate of four fives engraved for the Rock Island Bank, as the agreement or contract was made with him individually, and not with the Rock Island Bank. I asked him if he did not make the contract for the Rock Island Bank, as their cashier. He said he did, but had the contract run to himself individually, but intended it, of course, for the Rock Island Bank. I asked him if it was not the Rock Island Bank's money that was ad-

vanced to said Georgia Bank. He said it was. I asked him if the Rock Island Bank did not send him as their cashier to arrange and contract with said Georgia Bank for the circulation of one hundred and ten thousand dollars. He said they did. I asked him if
211 it was not expressly agreed and put into the contract with said Georgia Bank, that said one hundred and ten thousand dollars should be struck off from a plate of four fives engraved expressly for the Rock Island Bank circulation, to be furhished by said Georgia Bank, and that only the one hundred and ten thousand dollars should be struck off from said plate, and that said one hundred and ten thousand dollars should not be used for any other purpose during the continuance of said contract. He said it was so agreed, and in this way there could be no mistake made in mixing the currency, as several other parties had currency arrangements with said Georgia Bank, each having a separate and different plate for the circulation used by them. I asked him why the Georgia Bank did not furnish the twenty thousand dollars which he claimed was short on the contract. He said he did not know. I asked him if he, as cashier of the Rock Island Bank, ever notified the Georgia Bank that they were short twenty thousand dollars on their contract of one hundred and ten thousand dollars. He said he had not. I asked him why he did not call on them for this twenty thousand dollars that he claimed was short. He said he thought it might be a benefit to the Rock Island Bank to say nothing about it; then if the Georgia Bank should have any trouble, and undertake to do anything with the Rock Island Bank about this circulation, the Rock Island Bank could say the Georgia Bank did not fulfil their agreement and could demand damages. I asked him if he had ever paid for the twenty thousand dollars he had of the Georgia Bank, or Burr Higgins. He said he had not, but had a private arrangement with Burr Higgins, and insisted that the Rock Island Bank had nothing to do with this twenty thousand dollars. I told him that from his own statements this twenty thousand dollars was a part of the one hundred and ten thousand dollars, and, with
212 the ninety thousand dollars furnished the Rock Island Bank, made the full amount of one hundred and ten thousand dollars; and that the contract absolutely forbad the use of said circulation for any other purpose, and that he had taken and used twenty thousand dollars of the Rock Island Bank's circulation, which they were to have had from the Georgia Bank, and I had now learned from him all the facts, and demanded payment of the whole amount, the twenty thousand dollars lost of redemption, and interest from the time he received the money. He stated that he had not used the Rock Island Bank's funds; that it was his own; and that the Georgia Bank never had furnished the Rock Island Bank but ninety thousand dollars of the one hundred and ten thousand dollars. I told Mr. Mann that the Rock Island Bank were satisfied he had taken large amounts of their funds and appropriated the same to his own private use. I proposed to have him settle the entire thing with me, and save trouble and litigation. He said he did not want any litigation; and that he did not owe them, the Rock Island Bank, anything, but wanted my pro-

position. I told him that in order to have the matter settled without litigation, I would take twelve thousand dollars as a compromise between him and the Rock Island Bank, although they expected to get a judgment against him of some thirty thousand dollars if they were compelled to sue him. He said he would like to have me give him some ten days to consider the matter, and consult with his friends, and if I would return to Beloit in some ten days he would make me an offer of settlement. I told Mr. Mann that the Rock Island Bank had decided to commence suit against him forthwith unless he settled the business with me in some way, and that my offer of twelve thousand was a most liberal one in my opinion. The next—

213 Fourth interview: We had while riding about the city of Beloit with horse and buggy; the same day that we had the last-mentioned interview, or the next, I am not positive which. Our conversation was general, discussing some points already referred to, and nothing of interest occurred in this interview worthy of note, except it may be that Mr. Mann said he hoped we might arrive, at some basis of settlement, and avoid litigation. I promised him that I would return in about ten days and he would be prepared to accept my offer.

I did not return to Beloit until the 30th day of November, or about that date, when we had our—

Fifth interview: Which was at Mr. Mann's house. Mr. Mann came to the Bushnell House, where I was stopping, and requested me to go with him to his house. I went; it was about the middle of the afternoon. Mr. Mann introduced me to Judge O'Connor, and invited us both into his room, and then said to me he had invited his friend Judge O'Connor to be present and hear what was said between us, and to advise with him, &c. I told Mr. Mann it would take me a long time to explain the case to Judge O'Connor, so that he would feel competent to give advice in the case. Mr. Mann said he had simply invited the judge as a friend and not as an attorney. I told Mann to proceed. He spent the balance of the afternoon in discussing the contract with the Georgia Bank, and my letters to him, denying many things he had said to me at the former interviews, and his conduct with the Rock Island Bank; said he had acted in good faith with them, and was not liable to them for the twenty thousand dollars had of Burr Higgins, &c. There was nothing material to the case that occurred at this interview worth relating that I can call to

214 mind at this time. Our—

Sixth interview: Was the next day, at the Bushnell House, in Beloit, in the forenoon. Judge O'Connor was present with us, and appeared to take great interest in defending Seth H. Mann. This interview was spent in a general discussion of Mr. Mann's cashiership of the Rock Island Bank, and our previous interviews, and nothing of any material interest occurred worthy of note, in addition to what occurred in previous interviews. In the afternoon, at the same place, we had our—

Seventh interview: Judge O'Connor was present, and after going over the same ground, and discussing the same points as in the former

interviews, Mr. Mann said to me, that he, of course, denied owing the Rock Island Bank anything, legally, or morally, but for the purpose of avoiding a law-suit with the Rock Island Bank, he would give me two thousand dollars in good lands at fair prices to settle this whole matter. I told Mr. Mann that I refused anything less than my first offer, and only offer to compromise with him for twelve thousand dollars in cash. Mr. Mann said he would not pay it. I told him that my offer would now be withdrawn, and the Rock Island Bank would now prosecute him and demand full payment for all demands and dues of every kind, and my duty being discharged, I had nothing further to say about the matter, only to state my sincere regrets that we were not able to adjust this business amicably, and we then separated.

Last interrogatory: Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this case? If yea, set forth the same fully and at large in your answer.

215

Answer. I don't know of anything in particular, in addition to what I have above stated, that I can now state, that would be of any essential importance to the parties at issue in this cause, or either of them, or that would be material to the subject of this examination or the matters in question in this cause.

HEMAN BALDWIN.

Subscribed and sworn to before me, at my office in Chicago, this 18th day of June, A. D. 1863.

CYRUS BENTLEY, *Commissioner.*

I, Cyrus Bentley, of the city of Chicago, county of Cook, and State of Illinois, a commissioner duly appointed to take the deposition of the said Heman Baldwin, a witness, whose name is subscribed to the foregoing deposition, do hereby certify, that previous to the commencement of the examination of the said Heman Baldwin as a witness in the said suit between the said Rock Island Bank, complainant, and the said Seth H. Mann and Mary H. Mann, defendants, he was duly sworn by me, as such commissioner, to testify the truth, the whole truth, and nothing but the truth, in relation to the matter in controversy between the said complainant and the said defendants, so far as he should be interrogated concerning the same; that the said deposition was taken at my office in the city aforesaid, on the eighteenth day of June, A. D. 1863, and that after said deposition was taken by me, as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and that thereupon, the same was signed and sworn to by the said deponent, Heman Baldwin, before me, the oath being administered by me, said commissioner, at the place and on the day and year last aforesaid.

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[L. S.]

CYRUS BENTLEY,
Commissioner, &c.

Commissioner's fees $15.

[5-cent stamp, int. rev., cancelled.]

217 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

The President of the United States of America to William S. Rockwell, esq., Central City, Colorado Territory, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you, or any one or more of you, are invested with full power and authority to examine J. H. Kinney and William L. Lee, on their corporal oaths, as witnesses in a cause depending in the Circuit Court of the United States for the district of Wisconsin, wherein Rock Island Bank is complainant, and Seth H. Mann and Mary H. Mann are defendants, on the part of the complainant, upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said J. H. Kinney and William L. Lee to come before you, and then and there examine them, on oath, upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said Circuit Court of the United States, before the judge thereof, with all convenient speed.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at the city of Milwaukee, in said district, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

[L. S.] J. M. MILLER, *Clerk.*

218 *Rules.*

On the receipt of the commission, made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible, and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same (unless otherwise expressly directed therein) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission, that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party, or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial, separate from the commission.

Fourth. The commissioner, or commissioners, shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they, or he, shall immediately deposit the packet, so directed, in the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet, so directed, shall be delivered to said agent.

219 Circuit Court of the United States for the ninth circuit and district of Wisconsin.

ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN. } In equity.

Interrogatories to be administered to J. H. Kinney and William L. Lee, two witnesses to be produced, sworn and examined on behalf of said complainants before William S. Rockwell, esquire, commissioner.

1st interrogatory. What is your name, age, residence and business?

2nd interrogatory. Have you ever been any and what officer of the Rock Island Bank, complainant? If yea, state when, in what capacity when you became such officer, how long you remained such and when you ceased to be an officer of the complainant.

3rd interrogatory. Do you know the defendant, Seth H. Mann, or Mary H. Mann, or either of them? If yea, when and where did you become acquainted with them; and where did they reside during the time you knew them, and what was the said Seth H. Mann's business or employment while you knew him?

4th interrogatory. Do you know from admissions of or conversation with said Seth H. Mann, or otherwise, of your own knowledge, (if so, state how you know) whether or not said Seth H. Mann went to New York about January, 1855.

5th interrogatory. If to the last above interrogatory you answer that you know said Seth H. Mann did go to New York, state
220 all you know about his going, who he went for, on what busi-

ness, if any, and what he stated, if anything to you or to any officer of the complainant in your presence about the object of his going, and all he said about what business he did in New York, and who he said he transacted business with, what business he said he transacted, how he said he transacted it; give all the particulars of his statements on his return from New York.

6th interrogatory. If you answer to either of the foregoing interrogatories that said Seth H. Mann did go to New York, about January, 1855, on behalf of the complainant, to transact business for it with the Manufacturers and Mechanics' Bank, state whether or not said Seth H., after his return, informed you or any other officer of the complainant in your presence, that he had received from Burr Higgins, or any other person or persons, the sum of twenty thousand dollars, or any and what other sum in the bills of said Manufacturers and Mechanics' Bank; if he stated anything in regard to this, state fully all he said about it to you or in your presence.

7th interrogatory. State whether or not at a meeting of the board of directors of the complainant, in the winter of 1855 and 1856, or at any other time or place, the said Seth H. Mann ever informed you or the said board of directors, or any, and what other officer of the complainant, that the said Mann had received from Burr Higgins twenty thousand dollars in the bills of said Manufacturers and Mechanics' Bank, which had been delivered to him while in New York, in or about the month of January, 1855; if yea, state fully what said Mann said in relation to the same.

8th interrogatory. Did the said Seth H. Mann ever make any representations to you or in your presence to any other officer of complainant, what amount of its bills the said Manufacturers and Mechanics' Bank had advanced in all under the contract with said
221 Manufacturers and Mechanics' Bank, dated on or about August 8th, 1855? If yea, state when and where and under what circumstances and in whose presence said representations were made; and fully and in detail what said representations were and all he said about it, and state particularly as you can the dates and times of such representations.

9th interrogatory. Did said Seth H. Mann, in the winter of 1855 and 1856, submit to the board of directors of complainant any contracts betweeen himself and Burr Higgins, or any and what other person or persons, relating to the sum of twenty thousand dollars, received by him of Burr Higgins in New York, in or about January, 1855? If yea, state what contracts he so submitted, and state all that the said Mann said (if he said anything) in relation thereto at that time.

10th interrogatory. Has the said Seth H. Mann ever accounted with the complainant or paid over to it twenty thousand dollars, or any other and what other sum received by him of Burr Higgins, while in New York, in January, 1855? If so, state fully when, where and in what manner.

Last interrogatory. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties

at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

MAT. H. CARPENTER,
Sol. for Complainant.

222 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the Circuit Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file, and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in the said district of Wisconsin, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-seventh.

[L. S.] J. M. MILLER, *Clerk.*

223 Circuit Court of the United States for the ninth circuit, district of Wisconsin.

ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN. } In equity.

The depositions of William L. Lee and J. H. Kinney, taken by and before William S. Rockwell, commissioner, in pursuance of the authority of the commissioner hereto prefixed, taken at Black Hawk Point, in the county of Gilpin, Territory of Colorado; the said J. H. Kinney's deposition taken between the hours of twelve and one p. m., on the 4th day of July instant; the said William L. Lee's deposition taken between the hours of nine a. m. and twelve m. on the ninth day of July instant, said taken to be used in cause now depending in the Circuit Court of the United States for the ninth circuit, district of Wisconsin, wherein the Rock Island Bank is complainant, and Seth H. Mann and Mary H. Mann defendants; taken on motion of the complainant.

WILLIAM S. ROCKWELL,
Commissioner.

The witness J. H. Kinney, to the first direct interrogatory, answers as follows:

Answer. John H. Kinney; age thirty-one years; residence Black Hawk, Colorado Territory; business cashier for the Black Hawk Point Quartz Mining Company.

To the second direct interrogatory, witness J. H. Kinney answers as follows:

Answer. I have; I was assistant cashier; have been since the year A. D. 1856 to September, A. D. 1862.

To the third direct interrogatory, witness J. H. Kinney answers as follows:

Answer. I knew both of them; became acquainted with
224 them in March, 1854; they resided in Rock Island, in the State of Illinois; Seth H. Mann was the cashier of the Rock Island Bank, the complainant.

To the fourth direct interrogatory, witness J. H. Kinney answers as follows:

Answer. I know he went to New York, from the admissions of Seth H. Mann and by the letters received from him from there, about January, 1865. (William S. Rockwell, commissioner.)

To the fifth direct interrogatory, witness J. H. Kinney answers as follows:

Answer. I don't know what he went for; all that I know is that when he returned he informed me that he had made arrangements to use the issues of a Georgia bank; that is all I now remember.

To the sixth direct interrogatory, the witness J. H. Kinney answers as follows:

I don't know anything about the matters in this interrogatory referred to, except the going to New York, as before stated.

To the seventh direct interrogatory, the witness J. H. Kinney answers as follows:

Answer. I know nothing about the matters referred to in this interrogatory.

To the eighth direct interrogatory, witness J. H. Kinney answers as follows:

Answer. He never did.

To the ninth direct interrogatory, the witness J. H. Kinney answers as follows:

Answer. I know nothing, except what I have read in the record book of the board of directors of the Rock Island Bank, the complainant.

225 To the tenth direct interrogatory the witness, J. H. Kinney, answers as follows:

Answer. He has never paid over the twenty thousand dollars. I cannot now state from memory as to any other sums.

To the last direct interrogatory the witness, J. H. Kinney, answers as follows:

Answer. I know of nothing further.

JNO. H. KINNEY.

Subscribed and sworn to before me this 4th day of July, A. D. 1863.

WILLIAM S. ROCKWELL,
Commissioner.

The witness, William L. Lee, to the first direct interrogatory, answers as follows:

Answer. William L. Lee; age forty-eight years; residence Black Hawk Point, Colorado Territoy; business mining and milling.

To the second direct interrogatory the witness, William L. Lee, answers as follows:

Answer. I was one of the directors of the bank when first organized. I think this was in 1852, and remained a director up to the closing of the business of the bank, some time last March. I was made cashier some three months after the leaving of that position by Mann, which was, I think, some time in the month of June, 1856, and remained cashier up to the time of the closing of the bank. I have been absent for about three years, and John H. Kinney, assistant cashier, has performed the active duties of cashier.

To the third direct interrogatory the witness, William L. Lee, answers as follows:

Answer. Yes, both of them. I was first introduced to Mr. Seth H. Mann in New York in 1853 or 1854, before the organization
226 of the complainant. I became acquainted with Mrs. Mann, I think, in the fall of the same year that I became acquainted with Mr. Mann.

To the fourth direct interrogatory the witness, William L. Lee, answers as follows:

Answer. Yes, I knew he went to New York several times in 1855; went about January, 1855. I know this from what Seth H. Mann has told me, and from business that he said he transacted there.

To the fifth direct interrogatory the witness, William L. Lee, answers as follows:

Answer. He went, as he told the directors of the complainant, for them, to see if he could make some arrangement to get some currency to use as a circulating medium; he said he thought as other banks of Illinois had an arrangement with Georgia banks, he could make some kind of an arrangement for currency for the complainant for a low rate of interest; either the first or second time he went to N. York, (I am not certain which, but think the business was done the second time,) he said he had perfected an arrangement to use the issues of the Manufacturers & Mechanics' Bank of Columbus, State of Georgia, with one Storms as cashier, and Burr Higgins as president; men that he either knew or had been introduced to as fine men. I do not know that he stated the particular arrangement; he said many things about the matter not remembered at this time.

To the sixth direct interrogatory the witness, William L. Lee, answers as follows:

Answer. I can't state that Seth H. Mann, upon his return from New York, said anything to me or the other directors in my presence about having received twenty thousand dollars from Burr Higgins, or any other sum.

227 To the seventh direct interrogatory the witness, William L. Lee, answers as follows:

Answer. He did. He said, while in New York, when he perfected the first arrangement, he had received twenty thousand dollars of Burr Higgins; this was first made known to the directors, I believe, in 1856. When Burr Higgins and one Fonda, a cashier of said Manufacturers & Mechanics' Bank, who succeeded Storms, came to Rock

Island about a misunderstanding concerning twenty thousand dollars; a contract having been made by Seth H. Mann as cashier of the complainant, and for the complainant, with the Manufacturers & Mechanics' Bank for one hundred and ten thousand dollars of currency, the Manufacturers & Mechanics' Bank furnished ninety thousand dollars, and claimed to the complainant that it had complied with the contract for one hundred and ten thousand dollars, as Burr Higgins, as an officer of the Manufacturers & Mechanics' Bank, had furnished to Mann twenty thousand dollars.

To the eighth direct interrogatory the witness, William L. Lee, answers as follows:

Answer. He did; he said and claimed that the Manufacturers & Mechanics' Bank had furnished but ninety thousand ($90.000) under the contract; that the twenty thousand received of Burr Higgins (which was the first time this transaction became known to the complainant,) was on other or person matter, which had nothing to do with the contract for one hundred and ten thousand; these statements were made at the banking-house of the complainant, at Rock Island, some time in the year 1856, in the presence of the directors of the complainant, Burr Higgins, Fonda, cashier of the Manufacturers & Mechanics' Bank. Higgins & Fonda were there to show the complainant that the contract for one hundred and ten thousand had been complied with.

228 To the ninth direct interrogatory the witness, William L. Lee, answers as follows:

Answer. He did, some time in the year 1856, submit a contract to the board of directors of complainant with the Manufacturers & Mechanics' Bank for one hundred and ten thousand dollars, but no contract, as I now remember, with Burr Higgins. Higgins and Fonda, or one of them, I think, presented the board of directors of the complainant with a contract pertaining to the twenty thousand dollars received of Burr Higgins, while an officer of the Manufacturers & Mechanics' Bank. Mann claimed that the twenty thousand dollars, (as before stated,) was another and personal matter.

To the tenth direct interrogatory the witness, William L. Lee, answers and says as follows:

Answer. Mann never has, to my knowledge, paid over twenty thousand dollars to the complainant or any other sum received of Burr Higgins, while in New York in 1855; if he had paid it, I should have known it.

To the last direct interrogatory the witness, William L. Lee, answers as follows:

Answer. The directors nor officers of the complainant did not know, at the time of Mann's making the arrangement with the Manufacturers & Mechanics' Bank, that the complainant's money was the basis of the Manufacturers & Mechanics' Bank, but from what Mann said the directors of the complainant supposed that other parties with the complainant had furnished money as a basis of the Manufacturers & Mechanics' Bank, but learned afterward from said Mann that the deposits of the complainant in the city of New York had

been used to the amount of thirty thousand dollars, and was the only basis of the Manufacturers & Mechanics' Bank; under the con-
229 tract with the Manufacturers & Mechanics' Bank the complainant was to have the one hundred and ten thousand dollars for four years, and the complainant was to redeem the circulation of the Manufacturers & Mechanics' Bank so furnished in New York; at the end of the time return to the Manufacturers & Mechanics' Bank all the issues thus received, except the thirty-three thousand dollars; the complainant did redeem all the currency of said Manufacturers & Mechanics' Bank put into circulation, and more, too, which led to the discovery of the twenty thousand dollars that had been received by Mann of Burr Higgins, as before set forth, it being at the time said Higgins and Fonda came to Rock Island, as before stated. Mann, upon being interrogated by members of the board of directors of the complainant, said that the money received of Burr Higgins had been treated both in its disbursements and redemption the same as the balance of the money received of the Manufacturers & Mechanics' Bank; the whole transaction with Higgins and the Manufacturers & Mechanics' Bank was so mixed by Mann, he claiming that the twenty thousand dollars was a personal matter, and yet saying that it was used with the other currency, the Manufacturers & Mechanics' Bank claiming the whole one hundred and ten thousand dollars to be a transaction with the complainant; that the directors were unable to arrive at the truth; the complainant found itself liable for one hundred and ten thousand dollars to the Manufacturers & Mechanics' Bank, and had received but ninety thousand dollars.

WM. L. LEE.

Subscribed and sworn to before me this 9th day of July, A. D. 1863.

WM. S. ROCKWELL,
Commissioner.

TERRITORY OF COLORADO, *Gilpin County, ss:*

I, William S. Rockwell, commissioner appointed as such in
230 virtue of the commission hereto prefixed, do hereby certify that, in pursuance of the authority in me vested by said commission issuing out of and under the seal of the Circuit Court of the United States, district of Wisconsin, I caused, by notice to them directed, William L. Lee and J. H. Kinney, the persons named as witnesses in the aforesaid commission, to appear before me at the office of the Black Hawk Mining Company, in Black Hawk Point, in the county of Gilpin, Territory of Colorado, at 12 o'clock meridian, on the 4th day of July instant, and I then and there administered to the said J. H. Kinney, openly and publicly, before propounding to him any interrogatories, the following oath, the witness standing with uplifted hand: "You do solemnly swear that the answers given by you to the interrogatories to be propounded to you in a cause now depending in the Circuit Court of the United States, district of Wisconsin, wherein the Rock Island Bank is complainant, and Seth H. Mann &

Mary H. Mann defendants, shall be the truth, the whole truth, and nothing but the truth; so help you God," after which I publicly proceeded to propound to said Kinney each and every interrogatory hereto profixed, and did write down, in the presence of the witness, his answers, and after reading the same to the witness, caused him to sign the same, which is herewith returned. I further certify that at one o'clock p. m. of the same day I adjourned the taking of the evidence of William L. Lee, being unable, from other engagements, to proceed further, to the 9th instant at 9 o'clock a. m., at the same place, at which time and place the witness, William L. Lee, appeared, and I then and there publicly administered to the said William L. Lee, before propounding to him any interrogatories, the same oath that I administered to J. H. Kinney, the witness standing with uplifted hand, after which I publicly proceeded to propound to said William L. Lee each and every interrogatory hereto prefixed, and did write down, in the presence of the witness, his answers to each interrogatory, and after reading such answers to the said witness, caused him to sign the same, which is herewith returned.

Done at Black Hawk Point, county of Gilpin, this 9th day of July, A. D. 1863.

WILLIAM S. ROCKWELL,
Commissioner.

[5-cent. stamp.]

231 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

The President of the United States of America to George W. Pleasants, esq'r., Rock Island, Ills., greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed and by these presents you, or any one or more of you, are invested with full power and authority to examine Marcus B. Osborn, on his corporal oath, as witness in a cause depending in the Circuit Court of the United States for the district of Wisconsin, wherein Rock Island Bank is complainant, and Seth H. Mann and Mary H. Mann are defendants, on the part of the complainant, upon the interrogatories annexed to this commission; and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said Marcus B. Osborn to come before you, and then and there examine him on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the Circuit Court of the United States, before the judge thereof, with all convenient speed.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, at the city of Milwaukee, in said district, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

J. M. MILLER, *Clerk.*

232 *Rules.*

On the receipt of the commission made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible; and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same (unless otherwise expressly directed therein) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same, as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission, that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall, in like manner, be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial, separate from the commission.

Fourth. The commissioner or commissioners shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they or he shall immediately deposit the packet so directed in the nearest post office.

Sixth. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to said agent.

233 Circuit Court of the United States for the 9th circuit and district of Wisconsin.

ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN. } In equity.

Interrogatories to be propounded to Marcus B. Osborn, a witness to be produced, sworn and examined on behalf of the complainant in the above-entitled suit, before George W. Pleasants, esq., and John Livingston, esq., commissioners.

1st interrogatory. What is your name, age, residence and business?

2d interrogatory. Have you ever been any and what officer of the Rock Island Bank, complainant? If yea, state when, in what capacity, when you became such officer, how long you remained such, and when you ceased to be an officer of the complainant.

3d interrogatory. Do you know the defendant, Seth H. Mann, or Mary H. Mann, or either of them? If yea, when and where did you become acquainted with them, and where did they reside during the time you knew them, and what was the said Seth H. Mann's business or employment while you knew him?

4th interrogatory. Do you know from admissions of, or conversation with, said Seth H. Mann, or otherwise of your own knowledge, (if so, state how you know,) whether or not said Seth H. Mann went to New York about January, 1855?

5th interrogatory. If to the last above interrogatory you answer that you know said Seth H. Mann did go to New York, state all you know about his going, who he went for, on what business, if
234 any, and what he stated, if anything, to you or to any officer of the complainant in your presence about the object of his going, and all he said about what business he did in New York, who he said he transacted business with, what business he said he transacted, how he said he transacted it. Give all the particulars of his statements on his return from New York.

6th interrogatory. If you answer to either of the foregoing interrogatories that said Seth H. Mann did go to New York about January, 1855, on behalf of the complainant to transact business for it with the Manufacturers and Mechanics' Bank, state whether or not said Seth H., after his return, informed you or any other officer of the complainant in your presence that he had received from Burr Higgins, or any other person or persons, the sum of twenty thousand dollars, or any and what other sum in the bills of said Manufacturers and Mechanics' Bank. If he stated anything in regard to this, state fully all he said about it to you or in your presence.

7th interrogatory. State whether or not at a meeting of the board of directors of the complainant, in the winter of 1855 and 1856, or at any other time or place, the said Seth H. Mann ever informed your or the said board of directors, or any and what other officer of the complainant that he, said Mann, had received from Burr Higgins

twenty thousand dollars in the bills of said Manufacturers and Mechanics' Bank, which had been delivered to him while in New York, in or about the month of January, 1855. If yea, state fully what said Mann said in relation to the same.

8th interrogatory. Did the said Seth H. Mann ever make any representation to you, or in your presence to any other officer of complainant, what amount of its bills the said Manufacturers and Mechanics' Bank had advanced in all under the contract with
235 said Manufacturers and Mechanics' Bank, dated on or about August 8th, 1855? If yea, state when and where, and under what circumstances, and in whose presence said representations were made, and fully and in detail what such representations were, and all he said about it, and state particularly as you can the dates and times of such representations.

9th interrogatory. Did said Seth H. Mann, in the winter of 1855 and 1856, submit to the board of directors of complainant any contracts between himself and Burr Higgins, or any and what other person or persons, relating to the sum of twenty thousand dollars received by him of Burr Higgins in New York in or about January, 1855? If yea, state what contracts he so submitted, and state all that the said Mann said (if he said anything) in relation thereto at that time.

10th interrogatory. Has the said Seth H. Mann ever accounted with the complainant, or paid over to it twenty thousand dollars, or any other and what other sum received by him of Burr Higgins, while in New York in January, 1885? If so, state fully when, where, and in what manner.

Last interrogatory. Do you know any other matter or thing which may or can be of benefit or advantage to either of the parties to this suit? If yea, state and set the same forth, fully and completely, as if here particularly interrogated in relation thereto.

MAT. H. CARPENTER,
Sol. for Complainant.

236 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John M. Miller, clerk of the Circuit Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-seventh.

[L. S.] J. M. MILLER, *Clerk.*

237 Deposition of Marcus B. Osborn, taken before George W. Pleasants, under and by virtue of the writ hereto prefixed, at my office, in the city of RockIsl and, in the county of Rock Island and State of Illinois, on Monday, the sixth day of July, A. D. 1863, to be read in evidence on the hearing of a certain cause depending in the Circuit Court of the United States for the district of Wisconsin, wherein Rock Island Bank is complainant and Seth H. Mann and Mary H. Mann are defendants.

The said Marcus B. Osborn, of lawful age, being first by me duly sworn, in answer to the several interrogatories following, respectively deposed and said as follows:

Interrogatory 1st. What is your name, age, residence, and business?

Answer. My name is Marcus B. Osborn; I am sixty years of age; reside in the city of Rock Island, in the county of Rock Island and State of Illinois, and am an acting assistant paymaster of the United States navy.

Interrogatory 2nd. Have you ever been any, and what, officer of the Rock Island Bank, complainant? If yea, state when, in what capacity, when you became such officer, how long you remained such, and when you ceased to be an officer of the complainant.

Answer. I have been president of the Rock Islank Bank, complainant, from its establishment, in October, A. D. 1852, until now, and suppose I am yet such president.

Interrogatory 3rd. Do you know the defendant, Seth H. Mann, or Mary H. Mann, or either of them? If yea, when and where did you become acquainted with them, and where did they reside during the time you knew them, and what was the said Seth H. Mann's business or employment while you knew him?

Answer. I know both of said defendants; I became acquainted with them first in the county of Oneida and State of New York,
238 about the year 1825. The said Seth H. Mann was then clerk in a store in the village of Whitesboro'; the defendants were not then married; I have seen and known them more particularly in the said city of Rock Island, Illinois, during the period of the connection of said Seth H. Mann with the said complainant, as its cashier; he was such cashier from October, A. D. 1852, until his removal to Beloit, Wisconsin.

Interrogatory 4th. Do you know, from admissions of, or conversation with, said Seth H. Mann, or otherwise of your own knowledge, (if so, state how you know,) whether or not said Seth H. Mann went to New York about January, 1855?

Answer. I know that said Seth H. Mann went to New York in the month of January, A. D. 1855, from his admissions and statements made to me on his return, and from his letters to others which I have seen.

Interrogatory 5th. If to the last-above interrogatory you answer that you know said Seth H. Mann did go to New York, state all you know about his going--who he went for—on what business, if any, and what he stated, if anything, to you or to any officer of the com-

plainant, in your presence, about the object of his going, and all he said about what business he did in New York—who he said he transacted business with—what business he said he transacted—how he said he transacted it. Give all the particulars of his statements on his return from New York.

Answer. He went, after consultation with the directors of the said Rock Island Bank, to make an arrangement for obtaining the circulating notes of some institution to be used by said Rock Island Bank as currency; he stated this to be his sole object in going; and on his return said to me that he had negotiated with a party or parties in New York—among them he named Burr Higgins—for a supply of currency to be furnished by a new banking institution soon to be put in
239 operation in the State of Georgia, styled the Manufacturers and Mechanics' Bank, and that he had furnished, or agreed to furnish, thirty thousand dollars, in specie, of the funds of said Rock Island Bank to enable the new bank to commence operations; and I think he stated that the whole or a large part of the stock of the new bank had been transferred to him as security for the loan until it could be repaid by the issues of the new bank; and, either at that time or afterwards, he told me that he had returned this stock to enable the bank to go into operation, and that twenty thousand dollars of the notes of the said Manufacturers and Mechanics' Bank had been placed in his hands as security to protect him from all liability in connection with the bank; that this twenty thousand dollars could not be used as currency by the Rock Island Bank; but, under a new contract, was to be exchanged for new notes of small denomination, to be executed and prepared from a plate engraved expressly for the use of the said Rock Isiank Bank.

Interrogatory 6th. If you answer to either of the foregoing interrogatories that said Seth H. Mann did go to New York about January, 1855, on behalf of the complainant to transact business for it with the Manufacturers and Mechanics' Bank, state whether or not said Seth H., after his return, informed you, or any other officer of the complainant in your presence, that he had received from Burr Higgins or any other person or persons the sum of twenty thousand dollars or any and what other sum, in the bills of said Manufacturers and Mechanics' Bank. If he stated anything in regard to this, state fully all ' said about it to you or in your presence.

Answer. After his return, the said Seth H. Mann did state t and I think also to Isaac Negus and William L. Lee, directors o Rock Island Bank, in my presence, that he had received from Higgins the sum of twenty thousand dollars in the bills of the ufacturers and Mechanics' Bank, as stated in my last preced
240 answer, to which as to that, I now respectfully refer.

Interrogatory 7th. State whether or not at a meeting of the board of directors of the complainant, in the winter of 1855 and 1856, or at any other time or place, the said Seth H. Mann ever informed you or the said board of directors, or any, and what other, officer of the complainant, that the said Mann had received from Burr Higgins twenty thousand dollars in the bills of said Manufacturers

237 Deposition of Marcus B. Osborn, taken before George W. Pleasants, under and by virtue of the writ hereto prefixed, at my office, in the city of RockIsl and, in the county of Rock Island and State of Illinois, on Monday, the sixth day of July, A. D. 1863, to be read in evidence on the hearing of a certain cause depending in the Circuit Court of the United States for the district of Wisconsin, wherein Rock Island Bank is complainant and Seth H. Mann and Mary H. Mann are defendants.

The said Marcus B. Osborn, of lawful age, being first by me duly sworn, in answer to the several interrogatories following, respectively deposed and said as follows:

Interrogatory 1st. What is your name, age, residence, and business?

Answer. My name is Marcus B. Osborn; I am sixty years of age; reside in the city of Rock Island, in the county of Rock Island and State of Illinois, and am an acting assistant paymaster of the United States navy.

Interrogatory 2nd. Have you ever been any, and what, officer of the Rock Island Bank, complainant? If yea, state when, in what capacity, when you became such officer, how long you remained such, and when you ceased to be an officer of the complainant.

Answer. I have been president of the Rock Islank Bank, complainant, from its establishment, in October, A. D. 1852, until now, and suppose I am yet such president.

Interrogatory 3rd. Do you know the defendant, Seth H. Mann, or Mary H. Mann, or either of them? If yea, when and where did you become acquainted with them, and where did they reside during the time you knew them, and what was the said Seth H. Mann's business or employment while you knew him?

Answer. I know both of said defendants; I became acquainted with them first in the county of Oneida and State of New York,
238 about the year 1825. The said Seth H. Mann was then clerk in a store in the village of Whitesboro'; the defendants were not then married; I have seen and known them more particularly in the said city of Rock Island, Illinois, during the period of the connection of said Seth H. Mann with the said complainant, as its cashier; he was such cashier from October, A. D. 1852, until his removal to Beloit, Wisconsin.

Interrogatory 4th. Do you know, from admissions of, or conversation with, said Seth H. Mann, or otherwise of your own knowledge, (if so, state how you know,) whether or not said Seth H. Mann went to New York about January, 1855?

Answer. I know that said Seth H. Mann went to New York in the month of January, A. D. 1855, from his admissions and statements made to me on his return, and from his letters to others which I have seen.

Interrogatory 5th. If to the last-above interrogatory you answer that you know said Seth H. Mann did go to New York, state all you know about his going--who he went for—on what business, if any, and what he stated, if anything, to you or to any officer of the com-

plainant, in your presence, about the object of his going, and all he said about what business he did in New York—who he said he transacted business with—what business he said he transacted—how he said he transacted it. Give all the particulars of his statements on his return from New York.

Answer. He went, after consultation with the directors of the said Rock Island Bank, to make an arrangement for obtaining the circulating notes of some institution to be used by said Rock Island Bank as currency; he stated this to be his sole object in going; and on his return said to me that he had negotiated with a party or parties in New York—among them he named Burr Higgins—for a supply of currency to be furnished by a new banking institution soon to be put in
239 operation in the State of Georgia, styled the Manufacturers and Mechanics' Bank, and that he had furnished, or agreed to furnish, thirty thousand dollars, in specie, of the funds of said Rock Island Bank to enable the new bank to commence operations; and I think he stated that the whole or a large part of the stock of the new bank had been transferred to him as security for the loan until it could be repaid by the issues of the new bank; and, either at that time or afterwards, he told me that he had returned this stock to enable the bank to go into operation, and that twenty thousand dollars of the notes of the said Manufacturers and Mechanics' Bank had been placed in his hands as security to protect him from all liability in connection with the bank; that this twenty thousand dollars could not be used as currency by the Rock Island Bank; but, under a new contract, was to be exchanged for new notes of small denomination, to be executed and prepared from a plate engraved expressly for the use of the said Rock Island Bank.

Interrogatory 6th. If you answer to either of the foregoing interrogatories that said Seth H. Mann did go to New York about January, 1855, on behalf of the complainant to transact business for it with the Manufacturers and Mechanics' Bank, state whether or not said Seth H., after his return, informed you, or any other officer of the complainant in your presence, that he had received from Burr Higgins or any other person or persons the sum of twenty thousand dollars or any and what other sum, in the bills of said Manufacturers and Mechanics' Bank. If he stated anything in regard to this, state fully all he said about it to you or in your presence.

Answer. After his return, the said Seth H. Mann did state to me, and I think also to Isaac Negus and William L. Lee, directors of said Rock Island Bank, in my presence, that he had received from Burr Higgins the sum of twenty thousand dollars in the bills of the Manufacturers and Mechanics' Bank, as stated in my last preceding
240 answer, to which as to that, I now respectfully refer.

Interrogatory 7th. State whether or not at a meeting of the board of directors of the complainant, in the winter of 1855 and 1856, or at any other time or place, the said Seth H. Mann ever informed you or the said board of directors, or any, and what other, officer of the complainant, that the said Mann had received from Burr Higgins twenty thousand dollars in the bills of said Manufacturers

and Mechanics' Bank, which had been delivered to him while in New York, in or about the month of January, 1855; if yea, state fully what said Mann said in relation to the same.

Answer. The said Seth H. Mann acknowledged to me at various times, and I think in the winter of 1855 and 1856, in the presence of the board of directors of the complainant, at a meeting then being held by said board, that he had received of said Burr Higgins, at New York, in the winter or spring of 1855, twenty thousand dollars in bills of said Manufacturers and Mechanics' Bank.

Interrogatory 8th. Did the said Seth H. Mann ever make any representations to you, or in your presence, to any other officer of complainant, what amount of its bills the said Manufacturers and Mechanics' Bank had advanced, in all, under the contract with said Manufacturers and Mechanics' Bank, dated on or about August 8th, 1855? If yea, state when, and where, and under what circumstances, and in whose presence, said representations were made; and fully, and in detail, what such representations were, and all he said about it; and state particularly as you can the dates and times of such representations.

Answer. The said Seth H. Mann represented to me, in several conversations had with him at different times, and I think also on at least one occasion to the board of directors of the complainant, in meeting, in my presence, that by the contract of August, 1855,
241 (the precise date of which I cannot state,) with the said Manufacturers and Mechanics' Bank, the latter was to furnish him, for the use of complainant, the sum of one hundred and ten thousand dollars in its notes; but had, in fact, furnished only the sum of ninety thousand dollars, leaving a deficit under said contract of twenty thousand dollars; that he considered the said contract broken by the Manufacturers and Mechanics' Bank in so failing to furnish the whole amount named in it; and that the twenty thousand dollars received by him from Burr Higgins, as before stated, was so received under a different contract, and for a different purpose. These conversations were had at the banking house of the complainant in said city of Rock Island, and at different times during the fall and winter next after the date of said contract of August, 1855. I cannot be more specific as to the dates, nor state the conversations and representations with more detail, from memory, after this lapse of time, and I have only my memory to rely upon for them.

Interrogatory 9th. Did said Seth H. Mann, in the winter of 1855 and 1856, submit to the board of directors of complainant any contracts between himself and Burr Higgins, or any and what other person or persons, relating to the sum of twenty thousand dollars received by him of Burr Higgins, in New York, in or about January, 1855? If yea, state what contracts he so submitted; and state all that the said Mann said (if he said anything) in relation thereto at that time.

Answer. I cannot recollect whether or not the said Seth H. Mann submitted to said board of directors any contract or contracts with Burr Higgins, or any other person or persons, relating to said sum of twenty thousand dollars, either in the winter of 1855 and 1856, or at

any other time, in my presence; if he did, I cannot recall anything said by him on the subject at the time.

242 Interrogatory 10th. Has the said Seth H. Mann ever accounted with the complainant, or paid over to it, twenty thousand dollars, or any other, and what other, sum received by him of Burr Higgins while in New York in January, 1855? If so, state fully when, where, and in what manner.

Answer. It is not within my knowledge that the said Seth H. Mann ever, in any manner, accounted with the complainant for or paid over to it, the said sum of twenty thousand dollars so by him received of said Burr Higgins, or any portion of it; I think I should have known it if he had.

Last interrogatory. Do you know any other matter or thing which may or can be of benefit ar advantage to either of the parties to this suit? If yea, state, and set the same forth fully and completely, as if here particularly interrogated in relation thereto.

Answer. I recollect nothing of importance in the case, not herein before stated.

MARCUS B. OSBORN.

STATE OF ILLINOIS, *Rock Island County, ss:*

I, George W. Pleasants, commissioner under the commission hereto prefixed, do hereby certify that the foregoing deposition of Marcus B. Osborn—the said deponent having been first by me publicly sworn that the answers given by him to the interrogatories proposed to him should be the truth, the whole truth, and nothing but the truth—was signed and sworn to by the said deponent before me, and in my presence; and that the said deposition was taken and reduced to writing by me on the sixth day of July, A. D. 1863, between the hours of nine o'clock a. m. and five o'clock p. m. of said day, at the place and for the purpose mentioned in the caption thereof.

Witness my hand and seal at my office in the city of Rock Island, in said county, this sixth day of July, A. D. 1863.

[SEAL.] GEO. W. PLEASANTS,
Commissioner.

Comm'r's fees, $5 00.

243 In District Court of the United States for the district of Wisconsin.

ROCK ISLAND BANK
vs.
SETH H. MANN, *et als.* } In equity.

DISTRICT OF WISCONSIN, *ss:*

Deposition of James C. Mann, taken before me, Francis Blöodgood, commissioner, at my office in Milwaukee, in said district, this 8th day of September, A. D. 1860, Mat. H. Carpenter, esq., appearing on behalf of the complainant, and H. L. Palmer, esq., on behalf of the defendants.

James C. Mann being called as a witness on the behalf of the com-

plainants, and being by the commissioner first duly sworn, did depose and testify as follows:

Question. When and where were you born?

Answer. At Elmira, New York, 20th August, 1834.

Question. How long did your father reside at that place?

Answ. I don't of my own knowledge.

Question. How long did you remain in y'r father's family?

Ans. Till I was twenty-two.

Ques. Where did y'r father then reside?

Ans'r. He resided in Rock Island that week.

Ques. Previous to leaving y'r father's family, at the age of twenty-two, had you been engaged in any occupation from which you realized means in y'r own behalf? If so, when and what?

Ans'r. I had been in the bank four years; that had been in my regular business. I had some outside transactions.

Ques. What was y'r salary per year in the bank?

Ans'r. Three hundred dollars the first year. The second I don't remember; think it was $400. I think the last two years
244 was $600 each; am not positive about it.

Ques. Did you receive that salary as your own money, or was it rec'd by y'r father?

Ans'r. I rec'd it as my own money.

Ques. Did you, during those four years, support y'rself, or did y'r father support you?

Ans'r. I supported myself principally.

Ques. Were there any other adventures, or business, by which you made money for y'rself previous to leaving home, at the age of twenty-two.

Ans'r. There were.

Ques. What were they?

Ans'r. A good many things. The last year I was at Rock Island, after I was twenty-one, I bought notes often. I was interested in a brick building there; made money trading horses, and I bought some land near Rock Island. Before I left there I bought a bank. I was interested in buying wild lands. Those are all I recollect this moment. I haven't thought it over for several years.

Ques. What was the am't of y'r interest in the brick building?

Ans. I paid $750 towards the building in cash, and the rents of the first year were also applied on the building. I consider that my share cost $1,200.

Ques. How much did you invest in the land near Rock Island?

Ans. About $1,500; somewhere near there; don't know exactly.

Ques. How much in wild lands?

Ans. I don't know; can't give you any opinion; couldn't give you a list of the land; was not an active partner in it.

Ques. Who was concerned with you in the wild land business?

Ans. Doct. Lathrop.

Ques. Anybody else?

Ans. I believe not.

245 Ques. What was the arrang't between you and him about land, in brief?

Ans. I endorsed his note and he raised money east.

Ques. Did you pay any money on ac. of this wild land?

Ans. I did not; none of my own. We borrowed the money on the notes with my endors't.

Ques. What was the arrangement between you and Lathrop about the lands, in brief?

(This question objected to as irrelevant and immaterial.)

Ans. We were to buy lands, and when we sold them divide the profits, if any.

Ques. From whom did you borrow money for this purpose?

(This quest. is objected to as irrelevant and immaterial.)

Ans. I don't know. It was borrowed east somewhere.

Ques. About what am't?

Ans. Two or three thousand dollars, not positive which. I can't remember.

Ques. Have you ever paid any portion of it, and how much?

Ans. I don't know exactly how it stood. I have not been in the business man; what has been paid has all been paid out of the proceeds of the land.

Question. How much did you pay for the bank you say you bought?

(Object to, as above.)

Ans'r. I gave $14,000 00 of the Rock Island Bank stock, I think.

Question. Is that all?

Answer. It has slipped my mind exactly what it was. I have the contracts, but I have forgotten.

Question. Do you remember paying anything, or agreeing to pay anything but the $14,000 00 stock? If so, what was it?

Answer. I do not.

Question. Of whom did you make the purchase?

Ans. The Rock Island Bank.

Question. What officers of the bank did you negotiate
246 with?

(Objected to as irrelevant and immaterial.)

Ans. With M. B. Osborne, president, and S. H. Mann, cashier.

Ques. Was Mr. Osborne present when the purchase was consummated?

(Objected to as above.)

Ans. Do you mean when the papers were signed? He was.

Ques. Where did you get the $14,000 stock that you paid for the bank?

(Objected to; same as foregoing.)

Ans. I bought the stock on time. $10,000 of it was stock held by Mr. Osborn for the benefit of my mother. I bought this $10,000 of my mother. I bought $500 of it of J. J. Ellis, of New York; $500 of Mrs. Ellis, mother of said J. J. Ellis. I got $2,000 00 of Mr. Raymond, of Ohio. I think I got the other $1,000 00 of Dr. Lathrop.

Ques. Is Mr. Raymond a relative of yours?

Answer. No, sir.

Ques. How did you secure him for his stock?

(Objected on same grounds as foregoing.)

Ans. I think I gave Dr. Lathrop's endorsement, but I am not positive.

Ques. Have you ever paid the note to Raymond?

(Objected to as above.)

Ans. I think it has been paid, but am not certain.

Ques. Have you paid it y'rself?

Ans'r. I don't remember of having paid it.

Ques. Are the Ellis' an relations of yours?

Ans. They are.

Ques. How did you secure the pay't to them?

Ans. I gave them my note; paid 80 to 84 cts. on the dollar for the stock.

Ques. Have you ever paid that indebtedness?

Ans. No, sir.

Ques. When did you leave Rock Island?

Ans. The 30th June, 1856.

247 Question. What money and what property had you then that belonged to y'rself?

(Objected f'r same reasons as above.)

Ans. I can't give everything; but I can give some things. I had a sixth interest in Smith & Lathrop's block, Rock Island; I had fourteen and half acres of land in Beloit; I had the Oakwood Bank, subject to its circulation; I was interested with Lathrop in lands, as I have stated before.

Ques. Where did you get the money that you put into the block at Rock Island?

(Objected to as above.)

Ans'r. I borrowed $600 of the Rock Island Bank; paid $150 out of my salary; the balance was paid out of the rents.

Ques. Have you ever paid the $600 to the Rock Island Bank?

Ans'r. Yes, sir; or it was paid f'r me, which is the same thing.

Ques. By whom was it paid?

Ans'r. By Dr. Lathrop; he paid the note and interest.

Ques. Have you ever paid Dr. Lathrop?

Ans'r. I have.

Ques. When, where, and how?

An'r. I paid him by receipts from the Chippewah Bank.

Ques. What kind of receipts?

Ans'r. The coupons on the bonds deposited at Madison as security for the circulation of that bank.

Ques. From whom did you receive those?

Ans. From Lucas & Simons, St. Luis; the firm may have been at the time Taylor, Lucas & Co.; I paid for these bonds in the notes of the bank.

Ques. From whom did you receive the notes of the bank?

Ans. The bank controller at Madison.

Ques. Did you receive them from the bank controller as y'r own?

Ans. Yes. I may qualify this by saying that this bank was owned by Dr. Lathrop and myself; but I did the business and rec'd them f'r both of us.

248 Ques. What was the am't of the capital of the Chippewah; the bank?

Ans. $50,000; fifty thousand dollars.

Ques. What was the am't of the capital of the Oakwood Bank at the time you bought?

Ans. I think it was $29,000; may not have been but $25,000 00.

Ques. What am't of stocks were deposited for that Chippewah circulation?

Ans'r. I don't remember; the circulation was $50,000 and the bonds covered that am't of circulation at the New York quotations.

Quest. When did you and Lathrop establish that bank?

Ans'r. We were at it some time; we got the bills out Nov'r, 1856.

Quest'n. Where did you and Lathrop obtain those bonds?

Ans. In St. Louis of that firm; the title of the firm I don't remember, Lucas & Simons.

Ques. What did you pay?

Ans. About ninety per cent.

Ques. Did you pay money?

Ans. I paid f'r them in the bills of the Chippewah Bank; bo't them on credit, and then paid for them in the bills of the bank after they were issued.

Ques. Of whom did you buy the fourteen and a half acres in Beloit, and what did you pay?

Ans. Dunbar & Wheeler; I paid $2,000 00 in all.

Ques. When did you buy it?

Ans'r. I think in Sept., 1855.

Ques. Did you pay them for it y'rself?

Ans. I didn't hand them the money, but I paid it. I don't understand y'r question; I sent the money to them by express; I think the first part of it from Rock Island.

Ques. How much did you send from Rock Island?

Ans. Nine hundred dollars.

Ques. Where did you get that money?

Ans. I borrowed it from the Rock Island Bank.

249 Ques. From what officer of the bank?

Ans. From the cashier, my father.

Ques. Was the other $600 bor'd from y'r father also?

Ans. I presume it was.

Ques. Did you give notes to the bank f'r these two sums, the $900 00 and the $600 00?

Ans. I did.

Ques. Was it the custom of the bank to keep a record of discounted notes?

Ans'r. It was.

Ques. Were those entered on the record?

Ans'r. They were not.

Ques. Why were they not entered.

Ans'r. Because they were soon to be taken up, and it was as convenient to count them; we had an apartment in the drawer f'r

keeping such things of that kind; all bankers keep a drawer of that kind.

Ques. Your notes were treated as cash?

Ans. They were.

Ques. Were they endorsed?

Ans. Yes; by Dr. Lathrop.

Ques. About what sum of money in all did you borrow from the Rock Island Bank, at different times, while your father was its cashier?

A. About $3,000 00 in all, I guess.

Q. Was that all discounting of your notes in the same way you have described?

A. Yes.

Question. Were any of those notes entered on the books of the bank?

A. I don't think they were.

Q. To whom did you pay the $900 00 note?

Ans. I suppose I paid it to the cashier.

Ques. When did you pay it?

Ans. I think it was in the spring of 1856.

Ques. Did you pay it in money?

Ans. I did.

250 Ques. Where did you get the money?

Ans. From Dr. Lathrop.

Ques. Did you borrow it of him?

Ans. No.

Ques. Was he owing it to you?

Ans. Yes; it was for the 30 acres I sold to him in Rock Island.

Ques. When did you sell him that?

Ans. In the spring of 1856.

Ques. What did you sell it for?

Ans. In the neighborhood of $3,200 or 3,300 00, may be $3,500 00.

Ques. Of whom did you obtain that land?

Ans. Of a man named Murphy.

Ques. What did you pay him in?

Ans. Cash.

Ques. What did you pay?

Ans. About 1,400 or $1,500; may have been as low as $1,200 00.

Ques. When did you make that purchase?

Ans. In the fall of '55 some time, I think.

Ques. Where did you get the money?

Ans. I borrowed it; it is included in the $3,000 00 in money that I borrowed of the Rock Island Bank.

Ques. Has the money you bo't this 30 acres with been paid out of your funds?

Ans. Yes.

Ques. When was it paid?

A. I think in the spring of '56.

Ques. Have you ever with y'r own hand and from y'r own pocket ever paid to the Rock Island Bank any part of the money which you borrowed from it?

Ans. This put in such a peculiar form I may be able to ans'r it; I can't say that the money came from my pocket; it came from sales of property of mine.

251 Ques. When did you move from Beloit to Rock Island?

Ans. I left Beloit for Rock Island the 3d day Sept'r, '52.

Ques. What money or property had you at that time belonging to y'rself?

Ans. I don't think I had any property or money.

Ques. Have you since that time rec'd any sums of money or am't of property by gift or devise from any other person than y'r father and mother?

Ans. I have not.

Ques. Have you since Sept. 3, 1852, rec'd any sums of money or property from y'r father or mother, directly or indirectly?

Ans. I have rec'd small sums of money and small articles of personal property.

Ques. How much in all?

Ans. I don't know; it may be $600 00; may not be more than half; this is a rough guess; have not thought of it.

Ques. What proportion of y'r income from the bank during the 4 years you were in its employ at Rock Island did you spend f'r y'r living?

Ans. I don't know how to ans'r the question; I have many things now that I bought then; I have a watch I bought then; I presume I accumulated $1,000 00 during those four years; that is I saved up that am't; this arose from my salary and my little trades, not including real estate transactions, over and above my living expenses.

Ques. Then all y'r trades and purchases of real estate were on credit?

Ans. My original purchases; yes, sir.

Ques. Have you at any time, directly or indirectly, borrowed or had money from y'r father, in any way whatever, since Sept., 1852?

Ans. As I have answered before, I have had some, but I never borrowed any from my father.

252 Ques. Have you from y'r mother?

Ans. I don't remember now of borrowing any from my mother.

Ques. What sales of y'r real estate were made between Sept., '52, and June, '56, that is while you lived in Rock Island?

Ans. I sold 30 acres of land near the city of Rock Island, the same I have spoken of; this land was my own; I don't know about the Lathrop lands.

Ques. What did Lathrop pay you f'r that 30 acres; was it money?

Ans'r. Yes; it was money.

Ques. Did he pay it to you personally?

Ans'r. I don't know whether he handed me money or not; the first pay't was to trke up the $900 at the Rock Island Bank; and I don't know whether he took up the note, or paid the money to me and I took up the note.

Ques. What was the next pay't made by Lathrop to you?

Ans'r. I do not recollect the exact time; I have not thought of it in so long, and I have dealt so much back and forth with him.

Ques. Have you any books that will show?

Ans. The books of the Dr. and myself together would tell the whole thing.

Ques. When did you first become acquainted with Lathrop?

Ans. I knew him when I was a small boy; he lived then at Syracuse; and I have known him intimately f'r the last 16 years.

Ques. Is he a man of property?

Ans'r. I don't suppose he is very wealthy or that he is a poor man; I don't what he is worth now; I considered him good times, as when he was living at Rock Island, worth $10,000.

253 Ques. When did he go to Rock Island?

Ans. In 1854; I think.

Ques. Where did he move from?

Ans. From N. Y. city; I think.

Ques. Have you ever paid y'r mother f'r the bank stock? If so, where and how?

Ans. I have paid her by transferring the Oakwood Bank to her; and I don't remember when, exactly; may be the latter part of '56; may be fore part of '57.

Ques. You sold the bank to her?

Ans. Yes.

Ques. What did she pay you for it?

Ans. She gave me up my note; it was $12,000; I had $12,000 of the Rock Island stock from my mother, instead of $10,000 00 as I stated this morning; my mistake this morning was, that I did not purchase the $2,000 of the Raymond stock; my mother purchased it and furnished it to me.

Ques. Did your mother pay you anything else f'r that bank, except to deliver up y'r note for $12,000 00?

Ans'r. I believe not; I was going to explain that there is $1,000 Rock Island Bank stock of Lathrop in the trade f'r the Oakwood Bank, and in settling with Lathrop I shall arrange it with her; this has nothing to do with the sale to mother of the Oakwood Bank.

Ques. Who was present when you consummated [was present when you consummated] the purchase of the Oakwood Bank from the Rock Island Bank; was any one present but your father?

Ans'r. I can't swear that I remember that both my father and Mr. Osborne were present, but I believe they were.

Ques. Can you swear positively that Mr. Osborne was present?

254 Ans. I cannot.

Ques. Can you swear positively that your father was present?

Ans. I cannot.

Ques. Can you swear positively that any one was present besides yourself, and if so, who?

Ans. I cannot.

Ques. What was the date of that purchase?
Ans. In spring of 1856; can't give the exact date.
Ques. Was'nt it the 10 June, 1856?
Ans. No, sir.
Ques. Was it before or after that time?
Ans. I think it was before.
Ques. How long before?
I do not remember; I have forgotten.
Ques. About how long?
Ans. I do not remember.
Ques. Was in five days or three months?
Ans'r. My impression it was in May; may have been April or June.
Ques. What papers do you speak of as being signed?
Ans'r. The contract f'r sale of the bank to me.
Ques. Where is that contract?
Ans. It is in my possession.
Ques. Who delivered that contract to you?
Ans. I do not remember.
Ques. Wasn't it y'r father?
Ans. Don't remember which it was.
Ques. Do you remember where?
Ques. Was it delivered at time it is dated?
Ans. I do not positively recollect whether it was or not.
Ques. Were you in the bank with your father on the 10th June, 1856, after banking hours, and did you then see him make certain entries in the books of the bank in reference to this Oakwood
255 Bank sale?
Ans'r. I do not positively recollect.
Ques. Can you swear from your present recollection that this contract was delivered to you and actually in your possession before June 10, 1856?
Ans'r. I can.
Ques. How long before?
Ans'r. I can't state any time; my father went away for a few days, and I had it before he went away; I know I had the contract before the 1st June.
Ques. Was in anyone interested with you in the purchase of the bank?
Ans'r. Not at the time I purchased it.
Ques. How long did you own the Oakwood Bank?
Ans'r. I owned it all the time till I sold it to my mother.
Ques. You say that there was $10,000 of the Rock Island Bank stock held by Mr. Osborne for y'r mother, and two thousand dollars besides that furnished by her; from whom did she obtain the $2,000?
The def't objects to proceeding further in this examination, and insists that the commissioner has no power to take the testimony, no commission having been issued and no order having been made for the examination of the witness, and the witness being a resident within one hundred miles of the city of Milwaukee, the place where

this court is held, and the def't not having consented to the taking of the testimony in this manner.

The witness here, under the advice of his counsel, refuses to answer this question, or to answer any further question in this matter.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

256 I, Francis Bloodgood, examiner in chancery and court com'r in said district, residing at the city of Milwaukee, do hereby certify and report that the foregoing is the deposition of James C. Mann, taken before me in the cause entitled in the caption thereof at the time and place therein stated, and contains the record of all the proceedings before me at the time of the taking of the same; that it was not concluded because the witness, under the advice of his counsel, refused to answer any further questions as therein set out; and that I have now been requested by the complainant's counsel to certify and return the same to the court.

Witness my hand this 28th day of September, 1864.

FRANCIS BLOODGOOD,
Court Com'r, Dis't Wisc.

Com'r fees, $9 00.

257 *Decree.*

At a stated term of the Circuit Court of the United States of America, for the ninth circuit and district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the second Monday of September, A. D. 1864, being the 12th day of September, A. D. 1864.

Present: Hon. Samuel F. Miller, presiding judge of said court, and Honorable Andrew G. Miller, district judge.

On the 22d day of said term, to wit, the 8th day of October, A. D. 1864.

Present: Hon. Andrew G. Miller, district judge, presiding. The following proceedings were had, to wit:

THE ROCK ISLAND BANK, complainants,
against
SETH H. MANN and MARY H. MANN, defendants.

This day this cause came on to be finally heard upon the amended bill of complaint, the answer of the defendants and the replication thereto, and the pleadings and proofs, and was argued by counsel, and thereupon upon consideration thereof it is by the court now here ordered, adjudged and decreed as follows, that is to say:

That the contract made and entered into in name and form by and between the said Seth H. Mann, one of the said defendants, and the "Manufacturers and Mechanics' Bank of Columbus," Georgia, on the 8th day of August, A. D, 1855, dated that day, a copy of which is attached to and forms a part of the said amended bill of complaint in this cause, marked exhibit No. 2, was made and entered into by the

said Seth H. Mann as the cashier and agent of the said complainants and for its benefit and on its account, with full authority from said complainant to make and enter into said contract, and with
258 full knowledge on the part of the said "Manufacturers and Mechanics' Bank of Columbus," that the said Seth H. Mann was making and entering into the same on account and for the benefit of the said complainant, and not on his own account or for his own benefit, and that in equity the said complainant and not the said Seth H. Mann was and is entitled to the benefit of said contract, and ought to perform all the provisions thereof therein expressed to be performed by the said Seth H. Mann.

And it is further ordered, adjudged and decreed that the said Seth H. Mann, as cashier and agent of the said complainant, did at the city and at the State of New York, on the 22d day of January, A. D. 1855, receive from the said "Manufacturers and Mechanics' Bank of Columbus" twenty thousand dollars in the circulating notes and currency issued by said last-named bank, of the value of twenty thousand dollars, and that the said Seth H. Mann received the same for and as the cashier and agent of the said complainant, and ought immediately thereafter to have delivered the same over to the said complainant, but that instead thereof the said Seth H. Mann fraudulently concealed from the said complainants all knowledge of the fact that he had so received the same; and that the same remained in the hands of the said Seth H. Mann at the time he made and entered into the said contract, dated the eighth day of August, A. D. 1855, and that it was ageed and understood by and between the said Seth H. Mann and the said "Manufacturers and Mechanics' Bank of Columbus," when the said last-named contract was made and entered into, that the said sum of twenty thousand dollars before that time received by the said Seth H. Mann, as hereinbefore stated, should be and constitute a part of the said sum of one hundred and ten
259 thousand dollars which in and by said contract the said "Manufacturers and Mechanics' Bank of Columbus" agreed to advance, loan and deliver, as therein stated; and that upon the execution and delivery of said contract, to wit, on the eighth day of August, A. D. 1855, the said sum of twenty thousand dollars so received before that time by the said Seth H. Mann became and was the proper money of the said complainant absolutely, and that so it was expressly understood by and between the said Seth H. Mann, acting for said complainant, and the said Manufacturers and Mechanics' Bank of Columbus, when said contract was entered into, on the eighth day of August, A. D. 1855 as aforesaid, and that it thus became and was the duty of the said Seth H. Mann immediately, or within reasonable time after the execution and delivery of the said contract, on the day of its date, to wit, the eighth day of August, A. D. 1855, to deliver over to the said complainant the said sum of twenty thousand dollars in said circulating notes; but that on the contrary thereof, the said Seth H. Mann, disregarding his duty in the premises, fraudulently concealed from the complainant the fact that he had so received he same, and never delivered the same to the said complainant, nor

ever accounted with said complainant therefor, but converted the same to his own use, in fraud of the rights of the said complainant in that behalf.

And it is further ordered, adjudged, and decreed, that the said Seth H. Mann ought to pay over to the said complainant the said money so received by him as aforesaid to wit: the said sum of twenty thousand dollars and interest thereon, from the eighth day of September, A. D. 1855, at the rate of seven per centum per annum, (thirty days being a reasonable time after the making of said contract within which said Seth H. Mann ought to have delivered said twenty thousand dollars over to said complainant;) which in-
260 terest to this day (being for the term of nine years and one month) amounts to the sum of twelve thousand seven hundred sixteen dollars and sixty-six cents; that is the sum of thirty-two thousand seven hundred and sixteen dollars and sixty-six cents in all: And it is further ordered, adjudged, and decreed, that the said Seth H. Mann pay into this court for the said the Rock Island Bank, complainant in this cause, the said sum of thirty-two thousand seven hundred and sixteen dollars and sixty-six cents, together with the costs of the said complainant in and about this suit to be taxed, within thirty days from this day.

And it is further ordered, adjudged, and decreed, that the said Mary H. Mann was at the time of the exhibiting and filing of the bill of complaint in this cause, and at the time of the service of the subpœna in this cause upon the said Seth H. Mann, and the said Mary H. Mann, defendants, seized in fee of the following described real estate, situated and being in the county of Rock, in the district of Wisconsin, described as follows, viz:

A part of section twenty-five town. one north, of range twelve east, particularly described as follows: beginning in the centre of Turtle creek in a line running north eighty-eight and one-quarter degrees west from a point in east line of said section, nineteen (19) chains and 91 links south of quarter section posts; thence 88¼° west, 2030 links to the centre of Beloit and Janesville road; thence south 35¾° west in centre of said road, 732 links to the northwest corner of land conveyed to J. V. Smith by B. F. Baker and wife; thence south 87¼° east on line of said Smith land about 2,700 links to centre of said creek; thence up said creek to place of beginning, containing 14½ acres. Also another piece of land in Beloit in said county, described as follows, viz: beginning at the northwest corner of land deeded by
261 Lucy Ann Harris to Eliza M. Hinman; thence south 1½° east, 12 chains and eight links to the southwest corner of land sold by Hawkins to Rufus Clark; thence south 38 degrees east along the south line of said Clark land, 30 chains and 15 links to the centre of the Beloit and Janesville road; thence south 31½° west along the centre of said road, 8 chains and 47 links to the southwest corner of said Clark land on the east side of said road; thence south 88¼°, east 24 chains and 52 links to the range line; thence south on the said range line 2 chains and 54 links; thence north 88¼°, west 25 chains and 30 links to the centre of said road; thence south 35½° west along the

centre of said road, 3 chains and 15 links to the northeast corner of the said Hinman land; thence north 88½°, west 22 chains and 5 links to the place of beginning, contain about 38½ acres. Excepting about six acres of land sometime conveyed by Samuel S. Johnson to one Blanchard off of the south side of the last above-described premises on the west side of said road. Also another piece of land described as follows, viz: part of section 25, in said Beloit, described as follows: Commencing on the range line in the bed of Turtle creek; thence running south 1½° west on the range line, 120 links to the southeast corner of a six and a half acre lot owned by said Mary H. Mann; thence westerly on the south line of said lot 610 links to the centre of Turtle creek; thence southerly 144 links to a point 650 links west of the range line; thence southeasterly 484 links to a point 393 links west of the range line; thence south 47 degrees east to the south line of a 14½ acre lot owned by the said Mary H. Mann west of said creek; thence north sixty-six degrees 27′, east 570 links; thence north 18° 28′, west 541 links to the place of beginning, containing about 3¾ acres.

262 Also another piece of land in section 30 in the said town of Beloit, described as follows: beginning at a point in the centre of the Milwaukee road 1,565 links northeasterly from the point where the range line crosses the said road, and running thence north 51¾°, east 456 links; thence 41½° west, 933 links to the centre of Turtle creek; thence down the centre of said creek to the northeast corner of land sometime deeded by said Mary H. Mann to one W. T. Miller; thence south 41½° east to the place of beginning, containing 4 $\frac{5}{100}$ acres. Also another piece of land in the town of Turtle in said county described as follows: beginning in the range lines between the towns of Beloit and Turtle 521 links north of the corners of sections 25, 30, 31, and 36, and the centre of the Milwaukee road; thence running north 51¾°, east in the centre of said road 2.021 links; thence north 41½°, west 933 links to the centre of the Turtle creek; thence down the centre of said creek to the said range line; thence south ½°, west of said range line 120 links to a stake; thence west on the south line of land sometime owned by one Blodgett 610 links to the centre of the creek; thence down the centre of said creek to said range line; thence south ½°, west on said range line 544 links to the place of beginning, containing about 20 acres. All of said real estate being situate in the said county of Rock, in the said State and district of Wisconsin; and that the same was purchased and improved by the said Seth H. Mann in the name of the said Mary H. Mann, with a part of the said twenty thousand dollars so received by the said Seth H. Mann and belonging to the said complainant aforesaid; and that the said Seth H. Mann purchased the same in the name of the said Mary H. Mann with the intent to thereby hinder delay and defraud the said complainants and thereby to cover up and conceal from the said complainant the said investment of a

263 part of its said money, and that the said complainant is in equity entitled to a lien upon the said real estate heretofore described to the extent of the said sum of thirty-two thousand seven

hundred and sixteen dollars and sixty-six cents, together with the said complainant's costs to be taxed in this cause; and that the said complainant is entitled to be fully paid and indemnified for the said sum and costs in this cause, out of the avails of said real estate.

And it is further ordered, adjudged, and decreed, that all the real estate hereinbefore described was held by the said Mary H. Mann at the time of the exhibiting of the bill of complaint in this cause, and at the time of the service of the subpœna in this cause upon the said Seth H. Mann and the said Mary H. Mann, as trustee in equity for the said complainant to the extent and amount of the said sum of twenty thousand dollars, and interest thereon, as aforesaid, to that time.

And it is further ordered, adjudged, and decreed, that in case the said Seth H. Mann shall fail to pay into this court for the said complainant the said sum of thirty-two thousand seven hundred and sixteen dollars and sixty-six cents, together with the complainant's costs in this cause to be taxed, within thirty days from this day, according to this decree, that then all and singular the real estate hereinbefore described, together with the privileges, appurtenances, and improvements thereto belonging, or so much thereof as may be sufficient to raise the said sum of thirty-two thousand seven hundred and sixteen dollars and sixty-six cents, and said costs to be taxed, be sold at public auction, under the direction of the marshal of this district, unless the said Seth H. Mann, or some one on his behalf previous to such sale, shall pay the said sum and interest thereon from this day, together with costs to be taxed in this cause; and that the same
264 be sold in parcels by the said marshal under this decree.

And it is further ordered, adjudged and decreed, that the said sale be made at the post office in the city of Milwaukee, in this district, and that said marshal give public notice of the time and place of such sale by advertisement published in some newspaper printed in the City of Milwaukee in said district, at least once in each week for three months previous to the day of said sale; and that said complainant or any of the parties to this cause may become the purchaser thereof, and that said marshal execute a deed or deeds to the said purchaser or purchasers of the said real estate, and that said marshal pay out of the proceeds of said sale to complainants solicitor in this cause the said costs of the said complainant to be taxed in this cause, and that he bring the balance of monies arising from said sale into this court to be credited upon this decree.

And it is further ordered, adjudged, and decreed, that the defendants, and each of them, and all persons claiming or to claim from or under them, or either of them, by conveyance or otherwise since the commencement of this suit, be forever barred and foreclosed of and from all equity of redemption and lien upon or interest or claim of, in, or to, said real estate and every part and parcel thereof, and that the purchaser or purchasers of said real estate or any part thereof be let into possession thereof upon confirmation of said sale or sales, and that any parties to this cause who may be in possession or any part thereof, and any person or persons who since the commencement of

this cause has or have come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said premises and a certified copy
265 of the order confirming the report of sale in this cause.

And it is further ordered, adjudged, and decreed that the amount of money arising from such sale shall be credited upon this decree, and that this decree shall be this day docketed and be from this day a lien upon all real estate owned by the said Seth H. Mann within this district; and that the said complainant may have execution therof as a money decree from this day.

A. G. MILLER.

Signed, enrolled and filed Oct. 8, 1864.

A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*

And afterwards, to wit, at a term of said Circuit Court begun and held at the city of Milwaukee, on the second Monday, (being the tenth day of April, A. D. 1865,) and on the ninth day of said term, to wit, on the fifth day of July, A. D. 1865, the following proceedings were had to wit:

THE ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN. } In equity.

This day came the marshal and made report of sale made by him under the decree in this cause, as follows:

In the Circuit Court of the United States for the district of Wisconsin, in equity.

Report of sale.

THE ROCK ISLAND BANK, complainant,
vs.
SETH H. MANN and MARY H. MANN, defendants.

I, David C. Jackson, marshal for the district of Wisconsin,
266 hereby report that in pursuance and by virtue of a decree made by the Circuit Court of the United States for the district of Wisconsin, on the eighth day of October, A. D. 1864, as directed in said decree, I gave notice of the time and place of sale by publication once in [once in] each week for three months, in the Milwaukee Sentinel, a newspaper published in the county of Milwaukee, (a printed copy of said notice and the affidavit of publication are hereto annexed, and referred to as a part of this report,) and I did at the time and place mentioned in said printed notice, to wit, on the sixth day of June, A. D. 1865, at three o'clock p. m., at the post office, in the city of Milwaukee, then and there sell at public

auction the premises described in said decree as follows, to wit: The following described real estate, situated and being in the county of Rock, in the district of Wisconsin, viz: A part of section twenty-five (25) town. one (1) north of range twelve (12) east, particularly described as follows, beginning in the center of Turtle creek in a line running north eighty-eight and one quarter degrees west from a point in east line of said section, nineteen (19) chains and 91 links south of quarter section posts; thence north 88¼° west 2030 links to the centre of Beloit and Janesville road; thence south 35¾° west in centre of said road 732 links to the northwest corner of land conveyed to J. V. Smith, by B. F. Baker and wife; thence south 87¼° east on line of said Smith's land about 2,700 links to centre of said creek; thence up said creek to place of beginning; containing 14½ acres, which was sold for the sum of five thousand ($5,000) dollars. Also another piece of land in Beloit, in said county, described as follows, viz: beginning at the northwest corner of land deeded by Lucy Ann Harris to Eliza M. Hinman; thence south 1½° east 12 chains and eight links to the southwest corner of land sold by Hawkins to Rufus Clark; thence south 38 degree east along the south line of said Clark land 30 chains and 15 links to the centre of the Beloit and Janesville road;
267 thence south 35½° west along the centre of said road 8 chains and 47 links to the southwest corner of said Clark land on the east side of said road; thence south 88¼° east 24 chains and 52 links to the range line; thence south on the said range line 2 chains and 54 links; thence north 88¼° west 25 chains and 30 links to the centre of said road; thence south 35½° west along the centre of said road 3 chains and 15 links to the northeast corner of the said Hinman land; thence north 88¼° west 22 chains and 5 links to the place of beginning; containing about 38½ acres, excepting about six acres of land sometime conveyed by Samuel S. Johnson, to one Blanchard, off of the south side of the last above-described premises on the west side of said road, which was sold for the sum of sixteen hundred and fifty ($1,650) dollars.

Also another piece of land described as follows, viz: part of section 25 in said Beloit, described as follows: commencing on the range line in the bed of Turtle creek; thence running south 1½° west on the range line 120 links to the southeast corner of a six and a half acre lot owned by said Mary H. Mann; thence westerly on the south line of said lot 610 links to the centre of Turtle creek; thence southerly 144 links to a point 650 links west of the range line; thence southeasterly 484 links to a point 393 links west of by the range line; thence south 47 degrees east to the south line of a 14½ acre lot owned by the said Mary H. Mann, west of said creek; thence north sixty-six degrees 27′ east 570 links; thence north 18° 28′ west 541 links to the place of beginning, containing about 3¾ acres, which was sold for the sum of three hundred dollars. Also another piece of land in section 30 in the said town of Beloit, described as follows: beginning at a point in the centre of the Milwaukee road 1,565 links northeasterly from the point where the range line crosses the said road, and thence running north 51¾° east 456 links; thence 41½° west 933 links to the

268 centre of Turtle creek; thence down the centre of said creek to the northeast corner of land sometime deeded by said Mary H. Mann to one W. I. Miller; thence south 41½° east to the place of beginning, containing $4\frac{5}{100}$ acres, which was sold for the sum of four hundred dollars. Also another piece of land in the town of Turtle, in said county, described as follows: beginning in the range lines between the towns of Beloit and Turtle 521 links north of the corners of sections 25, 30, 31, and 36, and the centre of the Milwaukee road; thence running north 51¾° east in the centre of said road 2,021 links; thence north 41½° west 933 links to the centre of the Turtle creek; thence down the centre of said creek to the range line; thence south ½° west on said range line 120 links to a stake; thence west on the south line of land some time owned by one Blodgett, 610 links to the centre of the creek; thence down the centre of said creek to said range line; thence south ½° west on said range line 544 links to the place of beginning, containing about 20 acres, which was sold for the sum of one thousand dollars. All of said real estate being situate in the county of Rock, in the said State and district of Wisconsin, which was bid off by Cyrus Bently, of Chicago, Illinois, for the aggregate sum of eight thousand three hundred and fifty ($8,350) dollars, he being the highest and best bidder, and that being the highest and best price bid for the premises described.

And I further report, that the total amount of proceeds of said sale ($8,350) is insufficient to pay the principal, interest, and costs taxed, together with costs of sale due on said decree, and that said deficiency amounts to the sum of twenty-six thousand two hundred and twelve and sixty-six one hundredths dollars, as will more fully appear from the annexed statement, made a part of this report.

D. C. JACKSON,
U. S. Marshal.
By W. S. JACKSON, *Deputy.*

269 *Statement referred to in the foregoing report.*

Amount of decree		$32,716 66
Int. from October 8th, 1864, to June 6th, 1865, @ 7 p. c. per annum		1,513 89
Taxed costs		214 47
Cost of sales.		
Printer	86 80	
Drawing adv't	13 75	
Adjournments	4 00	
Making sale	10 00	
Report of sale	3 00	
		117 55
Total amount of decree, interest and cost		34,562 66
Proceeds of sale		8,350 00
Deficiency		$26,212 66

United States marshal's sale.

THE ROCK ISLAND BANK, complainant,
against
SETH H. MANN and MARY H. MANN, defendants.

In pursuance and by virtue of a decree made by the Circuit Court of the United States, in and for the district of Wisconsin, on the eighth day of October, A. D. 1864, in the above-entitled cause, I shall sell at public auction at the post office, in the city of Milwaukee, in this district, on Saturday, the twenty-fifth day of February, A. D. 1865, at three p. m., the following described property, or so much thereof as may be necessary to satisfy said decree, to wit, the following described real estate, situated and being in the county of Rock, in the district of Wisconsin, described as follows, viz: a part of section twenty-five, town. 1 north of range twelve east, particularly described as follows: beginning in the center of Turtle creek, in a line running north eighth-eight and one quarter degrees west from a point in east line of said section nineteen (19) chains and 91 links south of quarter section posts; thence north 88¼°, west 2,030 links to the center of Beloit and Janesville road; thence south 35¾°, west in center of said road, 720 links to the northwest corner of land conveyed to J. V. Smith by B. F. Baker and wife; thence south 87¼°, east on line of said Smith's land about 2,700 links to center of said creek; thence up said creek to place of beginning, containing 14½ acres; also another piece of land in Beloit, in said county, described as follows, viz: beginning at the northwest corner of land deeded by Lucy Ann Harris to Eliza M. Hinman; thence south 1½°, east 12 chains and eight links to the southwest corner of land sold by Hawkins to Rufus Clark; thence south 38 degrees east along the south line of said Clark land 30 chains and 15 links to the center of the Beloit and Janesville road; then south 35½°, west along the center of said road, 8 chains and 47 links to the southwest corner of said Clark, and on the east side of said road; thence south 88½° east 24 chains and 52 links to the range line; thence south on the said range line 2 chains and 54 links; thence north 88¼°, west 26 chains and 30 links to the center of said road; thence south 35½°, west along the center of said road 3 chains and 15 links to the northeast corner of the said Hinman land; thence north 38½°, west 22 chains and 5 links to the place of beginning, containing about 38½ acres, excepting about six acres of land sometime conveyed by Samuel S. Johnson to one Blanchard off of the south side of the last above-described premises on the west side of said road; also another piece of land described as follows, viz: part of section 25 in said Beloit, described as follows: commencing on the range line in the bed of Turtle creek; thence running south 1½°, west on the range line 120 links to the southeast corner of a six-and-a-half acre lot owned by said Mary H. Mann; thence westerly on the south line of said lot 610 links to the center of Turtle creek; thence southerly 144 links to a point 650 links west of the range line; thence southeastly 484 links to a point 30 links west of the range line; thence south 47° east to the south line of a 14⅓ acre lot owned

by the said Mary H. Mann, west of said creek; thence north 66° 27 east 570 links, thence north 18° 28′, west 541 links to the place of beginning, containing about 3¾ acres; also, another piece of land in section 30 in said town of Beloit, described as follows: beginning at a point in the centre of the Milwaukee road 1,565 links northeasterly from the point where the range line crosses the said road, and running thence north 51½°, east 456 links; thence 41½°, west 933 links to the center of Turtle creek; thence down the center of said creek to the northeast corner of land sometime deeded by said Mary H. Mann to one W. I. Miller; thence south 41½°, east to the place of beginning, containing 4 $\frac{5}{100}$ acres; also, another piece of land in the town of Turtle in said county, described as follows: beginning in the range lines between the towns of Beloit and Turtle 521 links north of the corners of sections 25, 30, 31, and 36, and the center of the Milwaukee road; thence running north 51¾°, east in the center of said road 3,021 links; thence north 41½°, west 933 links to the center of the Turtle creek; thence down the center of said creek to the said range line; thence south ½°, west on said range line 120 links to a stake; thence west on the south line of land sometime owned by one Blodgett, 610 links to the center of the creek; thence down the center of said creek to said range line; thence south ½°, west on said range line 544 links to the place of beginning, containing about 20 acres. All of said real estate being situation the said county of Rock, in the said State and district of Wisconsin.

DARIUS C JACKSON,
U. S. Marshal.

Nov. 23, q806d 1awtd.

The above sale is hereby adjourned to Tuesday, April 4th, 1865, at the same hour and place as above.

U. S. Marshal's Office, Milwaukee, Feb. 25, 1865.

D. C. JACKSON,
U. S. Marshal.

Feb. 28, r419d1awtd.

The above sale is hereby further postponed until Tuesday, the ninth day of May A. D. 1865, at the same hour and place as above.

D. C. JACKSON,
U. S. Marshal.

U. S. Marshal's Office, Milwaukee, April 4th, 1865.

The above sale is hereby further adjourned to Tuesday, the 23d day of May, 1865, at the same hour and place as above.

U. S. Marshal's Office, Milwaukee, May 9th, 1865.

D. C. JACKSON,
U. S. Marshal.

May 16, s24d1t.

The above sale is hereby further adjourned to Tuesday, the 6th day of June, A. D. 1865, at the same hour and place as above.

U. S. Marshal's Office, Milwaukee, May 23d, 1865.

D. C. JACKSON,
U. S. Marshal.

May 25, d2t1aw.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Louis Bleyer, being duly sworn, says that he is the foreman of the printer of the Milwaukee Sentinel, which is a public newspaper of general circulation, printed and published in the city of Milwaukee, in said county; that a notice, of which the printed one hereto attached is a true copy, was duly published in said newspaper, once in each week for three successive months, commencing on the 23d day of November, A. D. 1865, and that said printed copy was taken from said newspaper. Deponent further says, that the several notices of adjournment of said sale annexed to the said printed copy of the notice of sale were each duly published, once in each week, from the several adjournments to the day of sale.

LOUIS BLEYER.

Fees, $86 80.

[Three 2-cent rev. stamp, canc'd.]

270 Subscribed and sworn to before me this 8th June, A. D. 1865.

IRA T. HAYT,
Notary Public, Milwaukee County.

Received of Darius C. Jackson, esq., U. S. marshal, eight thousand three hundred and fifty dollars in full for the proceeds of sale in the above-entitled cause.

M. H. CAPENTER,
Sol. for Compl'ts.

Confirmation of sale.

And upon motion of the complainant's counsel, it is ordered by the court that said report of sale be and the same hereby is confirmed.

AUGUST 8TH, 1868.

This day came the defendants by their solicitor, Mr. Sleeper, and prayed an appeal to the Supreme Court of the United States from the decree heretofore entered in this cause, as follows:

In the Circuit Court of the United States, district of Wisconsin.

Appeal.

ROCK ISLAND BANK
vs.
SETH H. MANN and MARY H. MANN.

To the judges of the Circuit Court of the United States for the district of Wisconsin:

The defendants in this action hereby pray an appeal from the decree heretofore entered in this action, and from the whole thereof to the Supreme Court of the United States.

J. A. SLEEPER,
Solicitor for the Defendants.

AUGUST 8, 1868.

Appeal allowed.

A. G. MILLER,
District Judge.

271 Whereupon it is ordered by the district judge that said appeal be allowed. And came said defendants and filed their bond with Thomas S. Root and Peter C. Doremus as sureties in the penalty of five hundred dollars, conditioned to prosecute said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, which bond is approved by the district judge, and is as follows:

Supreme Court of the United States.

Bond for costs on appeal.

ROCK ISLAND BANK, appellee and respondent,
vs.
SETH H. MANN & MARY H. MANN, appellants.

Know all men by these presents, that we, Seth H. Mann & Mary H. Mann, as principals, of Orange, in the State of New Jersey, and Thomas S. Root and Peter C. Doremus, also of Orange, in the State of New Jersey, as sureties, are held and firmly bound unto Rock Island Bank in the sum of five hundred dollars, to be paid to the said Rock Island Bank, its successors and assigns, to which payment well and truly to be made we bind ourselves and each of ourselves, and each of our heirs, executors, and administrators jointly and severally firmly by these presents. Sealed with our seals and dated the twenty-sixth day of May, one thousand eight hundred and sixty-eight.

Whereas the above-named Seth H. Mann and Mary H. Mann are about to prosecute an appeal from the decree heretofore entered in

this action, and from the whole thereof, in and by the Circuit Court of the United States for the district of Wisconsin, to the Supreme Court of the United States to reverse the said decree.

272 Now therefore the condition of the above obligation is such that if the above-named Seth H. Mann and Mary H. Mann shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea in that behalf, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] S. H. MANN.
[SEAL.] MARY H. MANN.
[SEAL.] THOMAS S. ROOT.
[SEAL.] PETER C. DOREMUS.

UNITED STATES OF AMERICA, *District of New Jersey, ss* :

Thomas S. Root and Peter C. Doremus, the sureties in the above bond, being duly sworn, each for himself says that he is a resident and citizen of the State of New Jersey, and a freeholder therein; that he is worth double the amount of the penalty of the above and foregoing bond, and moreover and above all debts owing by him, and liabilities by him incurred, and over and above all exemptions allowed by law from forced sales or execution.

THOMAS S. ROOT.
PETER C. DOREMUS.

Subscribed and sworn before me this 13 day of July, 1868.

[SEAL.] CHARLES R. DAY,
Notary Public.

AUGUST 8, 1868.

Approved.

A. G. MILLER,
District Judge.

Whereupon a citation issued.

273 UNITED STATES OF AMERICA, *District of Wisconsin, ss* :

I, Edward Kurtz, clerk of the Circuit Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the case of the Rock Island Bank against Seth H. Mann & Mary H. Mann.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this third day of September, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

274 The United States of America to the Rock Island Bank, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to an appeal in the Circuit Court of the United States of America for the district of Wisconsin, wherein Seth H. Mann and Mary H. Mann are appellants, and you appellee, to show cause, if any there be, why the decree passed against the said Seth H. Mann and Mary H. Mann should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighth day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

[SEAL.]

A. G. MILLER,
District Judge.

I hereby accept service of above citation this 10th day of August, A. D. 1868.

MATT. H. CARPENTER,
Sol. for Complainant.

APPELLANTS' BRIEF.

SUPREME COURT OF THE UNITED STATES.

SETH H. MANN AND MARY H. MANN, APPELLANTS,

vs.

THE ROCK ISLAND BANK.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

Tomlinson Brothers, Printers, 150 Madison Street, Chicago.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1868.

SETH H. MANN and
MARY H. MANN,
Appellants,
vs.
ROCK ISLAND BANK,
Appellee.

This was a bill filed, by the appellee, against the appellants, to compel the execution of certain alleged trusts arising from alleged acts of Seth H. Mann, and the alleged use of moneys claimed by the appellee, to have belonged to it. The appellees seek to reach certain real estate, the title to which was in Mrs. Mary H. Mann, on the alleged ground that its money had been used in the purchase of the lands and making improvements on them.

The decree was against the appellants on both claims, to-wit: that the sum of $20,000 mentioned in the bill, was the Bank's money, and that the real estate was purchased, and the improvements made upon it, by nd with this $20,000. *There was no appearance by the defendants. f there had been, we do not believe any such decree would have been ade.* We claim that the decree is erroneous in whole, for the reason at the answers are required to be upon oath, and are so made; and that ey deny and avoid every material allegation in the bill, and are not nly not overcome by the testimony of two witnesses, or what is equal to wo witnesses, but there is no evidence—not a particle—that one dollar

of the $20,000, or any other money of the Bank, was used to purchase the land or to make the improvements, or that it in any way went into the property.

The origiral bill, after answer, was amended by striking out the whole of it, after the address, and making an entirely new bill. Neither the original bill nor the answer to it have any place in the record. I shall, therefore, treat the case as though it did not appear.

The amended bill commences at page 48 of the printed case.

1.—The first allegation of the bill is, that the Bank was organized previously to the first of January, 1852; that Seth H. Mann was elected its Cashier in August or July, 1852, he then residing with his wife, Mary H., at Beloit, Wis.; that he removed to Rock Island about September 1, 1852, and was Cashier until about June 10, 1856, and had the prineipal management of the business of the Bank.

This allegation is substantially admitted by the answer with the qualification that his management was subject to the supervision of Osborne, President, and the Directors of the Bank, [page 73, printed case.]

2.—The second allegation is in relation to a contract negotiated by Mann, as Cashier, in the name of Osborne, President, which, it is alleged, was partly written and partly in parol, and sets out the written part as Exhibit I.

The bill also alleges that pursuant to the written and parol agreement, Mann delivered to the Georgia Bank $30,000 in money of the funds of the Rock Island Bank, and took from the Georgia Bank therefor, three drafts payable in forty-five and sixty days, for $30,000, and also bills of the Georgia Bank to the amount of $38,000, in denominations of $20s, $50s, and $100s, for the Rock Island Bank, and that it was his duty to pass them over to the appellee.

This allegation is admitted by the answer, and it is also stated that on his return from New York, Mann placed the contract in the vault of the appellee, and that he had deposited the drafts and $38,000 in bank bills with Anthony Lane, the agent of appellee, in New York, for collection. [Pages 73 and 74.]

3.—The third allegation of this bill is that the Georgia Bank did not fulfill its contract with Osborne; that Osborne was not satisfied to have the contract remain in his individual name; that the $30,000 advanced

by Mann, for the appellee, to the Georgia Bank, had not been paid, and Mann went to New York about January 1855, to look after the interest of appellee, and obtain payment or security for this $30,000.

That January 22, 1855, the Georgia Bank took back from Mann the $38,000 of its bills, and gave him $20,000 in other of its bills, being one thousand sheets of four five dollar bills, which he received in the place of said $38,000, gave his own receipt to Burr Higgins for the $20,000, and that it was the duty of Mann to deliver to appellee these $20,000, *but that he fraudulently concealed from appellee and its officers and stockholders, that he had received them in place of the* $38,000.

That before May 1, 1855, the two Banks had negotiated in relation to a new contract which should modify or change the provisions of the contract, Exhibit No. 1, and it was finally executed on the 8th of August, 1855, and that about May 1, 1855, the Georgia Bank delivered to Mann, in pursuance of the contract negotiated, $20,000 of its bills other than the $20,000 delivered by Higgins, in January.

The answer, at page 74, admits that the Georgia Bank had not fulfilled its agreement with Osborne, and had not repaid the $30,000. But it denies that Osborne was not satisfied with the written contract; and, on the contrary, that he was well pleased with it; denies that Mann returned the $38,000 in its bills to the Georgia Bank, or that it took them back from him, and gave and delivered to him in their place, $20,000 in other of its bills; denies that it was Mann's duty to deliver the $20,000 to the appellee, or that he concealed from it or its officers or stockholders, that he had received this $20,000; on the contrary, says he informed Osborne that he had received them, and of the contract under which he had received them, and of the disposition he had made of the $38,000.

Admits that in January, 1855, Mann went to New York with Osborne's approval, *to obtain payment of the* $30,000 *or security.* That before he went, Osborne revoked the power of attorney, he had before given Mann, and directed him *not to make any new contract in his name, and not to alter or modify the old one;* that the Georgia Bank had neglected to perform the old contract, and it was no longer binding on Osborne. The answer then details the whole transaction with Higgins, Hotchkiss and Wheaton, showing that he received the $20,000 in pursuance of a personal, individual contract, in which he became person-

ally liable to pay $18,000; that the notes which he gave, and debts he assumed, were, at the date of said answer, unpaid; that Mann was personally liable thereon; that the Bank had never assumed, nor offered to assume or pay any of them, or relieve Mann therefrom. *And that appellee had never claimed any right in these* $20,000, *until October* 8, 1859. [Pape 77.]

Admits that the negotiations which resulted in the contract of August 8, 1855, were begun in March, 1855, and were substantially agreed upon about April 12, 1855; says the contract with Osborne had been entirely given up, when the $20,000 were paid to Mann, by Higgins, and no negotiations were pending for the use of the circulation of the Georgia Bank, by the appellee.

On page 78, the answer alleges that in January, 1855, when Mann made the contract with Higgins, he (Higgins) had not obtained possession of the Georgia Bank, its office or papers, but the old officers were still in possession, and refused to surrender or resign. Higgins was about to go to Georgia, to obtain the possession and control, and desired the $30,000 drafts and $38,000 bills, as a means to enable him to get that possession. Whereupon Mann delivered them to him for that purpose, and also to get payment, from the Georgia Bank, of the $30,000 and interest, or to return the drafts and bills to Mann, for appellee.

That about March 30, 1855, Higgins *returned the drafts and bills to Mann*, who then delivered to Higgins the receipt given by him for the drafts and bills. And soon after that, Mann delivered them to J. H. Fonda, as agent for appellee, for the purpose of collecting the amount due on the drafts, who took them to Georgia. That after the making of the contract of August 8, 1855, *the amount due on the drafts was fully paid to appellee, by moneys received by it from the Georgia Bank*, and the drafts and the $38,000 bills were then surrendered to it with the full knowledge and concurrence of appellee.

Admits that before May 1, 1855, Mann and Burr Higgins negotiated [illegible] relation to the contract finally made August 8, 1855, but denies that [illegible] was made or intended to modify the old contract, Exhibit No. 1.

But alleges that the Georgia Bank at all *times refused to alter or modify that contract*, or in any way to fulfill it beyond arranging for paying the amount due on the drafts and interest thereon. *The answer also ad-*

mits the delivery of $20,000 *about May* 1, 1855, *and says the bills were placed with other funds of appellee, and used for its benefit.* [Page 74.]

Thus, we see that the allegations of the bill, that the $20,000 received by Mann, in January, 1855, were received by him for the appellee, or that they belonged to appellee in any way, or that it was liable for their payment or redemption, is not only met and positively denied, but the details of the transaction show that Mann received them in consideration of the assumption by him individually, and not as Cashier, of debts and liabilities, and of his individual notes which he gave.

It appears by the answer, page 75, that Higgins had made a contract to purchase the Georgia Bank, and had agreed to pay a bonus of about $30,000, and held the circulating notes to a large amount; that he offered to sell to Mann and Hotchkiss an interest, and divide between them these circulating notes in proportion to the amount of stock each held. The agreements Nos. 1 and 2 to the answer, pages 84 and 85, were made, and January 22, 1855, Higgins paid to Mann the $20,000 of circulating notes as his share of that purchase. Mann having purchased three-fifths.

At page 77, the answers set forth the notes given by Mann, and liabilities assumed as follows:

Six Notes to William H. Hunt, for	$11,600.00
Notes of Higgin's, dated January 6, 1855, endorsed by Mann and agreed by him to be paid	3,400.00
Debit to the Camden Bank about	3,000.00
TOTAL,	$18,000.00

Which was three-fifths of the bonus Higgins had agreed to pay, and which, on the purchase, Mann agreed to pay him. The appellee does not claim that Mann had any power to buy this interest for it, or admit that it was liable to pay these several notes given by Mann, or the debts assumed by him. It of course does not pretend to be in any way owner of the Georgia Bank or any interest in it. So that it does not claim that it is entitled to be placed in Mann's place as owner of the interest purchased by him. There is, therefore, no impediment to his holding stock in the Georgia Bank, and still act as Cashier of appellee. Now, appellee cannot claim this $20,000 without paying Mann what he paid for it, or at least without paying the debts contracted by him in the purchase of the three-fifths interest, in consideration of which he received this $20,000.

The claim, too, that the $30,000 drafts and $38,000 of circulating notes were delivered to Burr Higgins, in exchange for this $20,000, and that, therefore, appellee is entitled to them from Mann, is fully met and overthrown, by the fact that Higgins afterwards returned these drafts and bills to Mann, and on such return Mann gave up the receipt to Higgins, which ended that transaction. And when Exhibit No. 2 was finally executed and delivered, the $30,000 advanced under the contract with Osborn, and secured by the drafts and circulating notes, and interest $3,000, was taken and considered as the $33,000 agreed to be loaned by appellee to the Georgia Bank, as set forth in the first paragraph of Exhibit No. 2 to bill. Page 65.

This is alleged to be the fact in paragraphs 4 and 5 of bill, page 51, and substantially admitted in the answer at the close of the paragraph, page 78. Marginal page 163. Thus, we see, that even admitting that this $20,000 was originally received in lieu of the drafts and $38,000 circulating notes,

these drafts and notes had not only been returned to the appellant, by Higgins, and the receipt which he gave for them surrendered, but appellee had actually re-loaned the $30,000 for four years without interest, upon the terms and conditions contained in the contract of August 8, 1855. Exhibit No. 2, page 65. Having done that, and received in that way payment from the Georgia Bank, it cannot, up to this stage of the transaction, lay any claim to the $20,000 of circulating notes.

The fraudulent concealment of the receipt of these notes is also denied by the answers, and at page of record 167, printed case 80, it is alleged that Mann immediately, on his return from New York, informed Osborn that he had received them, and of the contract with Higgins under which he had received them. If it be said that he received them under the contract contained in receipt Exhibit 3 to bill, then this is an allegation that he informed Osborn of that receipt. If, however, as we claim h received them under his contract of purchase of the three-fifths intere from Burr Higgins, then it is an allegation that Mann informed Osbo of that contract and purchase; and that Osborn knew, when the co tract of August 8, 1855, was made, that Mann was claiming these $2 000 as his own, and that Mann was the owner by purchase of an intere in this Georgia Bank.

Again, it is alleged in the answer, at page 81, that some time in the winter of 1855-6, and long before Mann ceased to be Cashier of appellee, he (Mann) at a regular meeting of the Board of Directors of appellee, communicated the fact that he had received the $20,000 from Higgins; that they were then held subject to his control; and that he also communicated to them a full and particular statement of all the facts and circumstances under which he received the same, and submitted to them all the contracts, writings and memoranda relating thereto in any way, for their inspection and examination. That all were submitted to Pleasants & Wilkinson, attorneys and counsel of the Bank, and after full examination and deliberation under advice of counsel, the Board determined that the Bank had no right, claim or interest in these circulating notes. And then, or at another meeting, Mann was authorized to enter into the contract, Schedule 6 to answer, with Hotchkiss; and that, with the knowledge and assent of the President and one or more of the Directors, Mann made another contract, Schedule No. 7, also with Hotchkiss.

Exhibit No. 6 provides for circulating the notes of the Georgia Bank to the amount of $90,000, if possible; which amount it will be remembered, is what we claim, and what the Directors and Pleasants & Wilkinson determined had been received by appellee from the Georgia Bank, under the contract of August 8, 1855.

And it is stated in the last paragraph, that that sum is all that has been paid on that contract, and that Hotchkiss and his Railroad Company, are only to account for that sum, $90,000, less $33,000 loaned to the Georgia Bank.

Schedule No. 7 is an agreement of Hotchkiss with Mann, to circulate and protect for him, his heirs and assigns, his $20,000 of these notes.

These allegations of the answer are all pertinent to the statements in the bill, and contain a full denial of every statement or insinuation; and these contracts entered into, after a full and perfect knowledge of all the facts, completely corroborate the denials and allegations in the answer.

And we here say, that in the evidence produced by appellee, there is nothing to meet or overthrow the denials, or to explain the facts proved by the several Exhibits to the answer. We shall hereafter call attention to the evidence in detail.

4.—But it is alleged in the bill, page 51, paragraph 5, that at the time

of making the contract of August 8, 1855, it was agreed and understood that the $20,000 received from Higgins by Mann, in January, and the $20,000 received about May 1, 1855, should be considered $40,000 of the $110,000.

The answer at page 79, case 165, margin, denies that it was then or ever agreed or understood, that the $20,000 paid by Higgins, in January, should be considered and held to be any part of the $110,000. And it also denies that the Georgia Bank or any person has ever surrendered the receipt given to Higgins, by Mann, in January, 1855, and which is Exhibit 3 to bill.

It also alleges that Higgins and Fonda, about August 7, 1856, after Mann had ceased to be Cashier of appellee, presented the receipt to Mann, at Beloit, and demanded a return of the $20,000 in bills, or payment of the money for them. And since then the same demand has been made of him.

Now, there is not a word of evidence proving that this $20,000 was considered a part of the $110,000, or that this receipt had been surrendered. The appellee examined four witnesses on this subject.

Heman Baldwin, who had seven interviews with Mann, states what he said to Mann in the first interview. [Pages 98 and 99.] And he makes Mann say in reply, what was true, that he made the arrangement with the Georgia Bank as Cashier of appellee, and paid over the $30,000, which it was to have according to the first contract, which was to be paid back in 60 or 90 days.

But he makes him say what was not true, that the appellee was to have $90,000 of the circulating notes of the Georgia Bank *according to the contract, * * and at the close of the same paragraph he makes him say that the first contract was never executed.*

If Mann made these two statements, they were very stupid lies, and we are forced to say that Mr. Baldwin is utterly mistaken.

The contract is set out, Exhibit No. 1 to bill, and is executed by Ransom, as President, and Storm, as Cashier, of the Georgia Bank, and by Osborn, by Mann, his attorney. And Mann says he had a power of attorney. This contract as set out provides that the Rock Island Bank should have $150,000 of the circulating notes of the Georgia Bank. But Mr. Baldwin had got the idea that $90,000 was the prominent figure-head

in the transaction, and in the four years which had elapsed between the conversation and the time he gave his deposition, he had displaced the facts in his memory. They are unimportant, however, and I only refer to them to show how unreliable he is.

He goes on to make Mann say that the Georgia Bank did not furnish any part of the $90,000, and that he made a new arrangement by which he added interest on the $30,000 for the time it had elapsed, and it was put in at $33,000, and the Rock Island Bank was to have $110,000 instead of $90,000. And they furnished $90,000, and no more.

Now, it was true that the Georgia Bank did not comply with the first contract; that it was abandoned, and an attempt was made to collect the $30,000 or get it secured. Osborn had revoked his power of attorney, to Mann, and instructed him to make no new contract in his name. And it is true that a new contract was made, August 8, 1855, but it is not true that under the first contract only $90,000 of bills were to be had by appellee, or that the $110,000 to be furnished under the last contract was to be in place of $90,000, nor even of the $150,000, but the second contract was new and independent of the first.

It was also true, as Mann stated, that the Georgia Bank did not furnish but $90,000 of its circulating notes under the last contract. And it was true, as Mann then told Baldwin, and as he makes Mann say, that *he had a private arrangement with Burr Higgins, and did receive from him* $20,000, *but it was his private arrangement with which appellee had nothing to do.*

The second interview resulted in a reiteration by Mann, that only $90,000 of the $110,000 had ever been furnished by the Georgia Bank to the appellee, *and that the* $20,000 *was his private matter with which the appellee had nothing to do.*

The third, resulted in the same statements. And the fourth, being a buggy ride to view the beauties of the city of Beloit, elicited nothing worthy of note.

The fifth, brought a third person on the scene, and all Baldwin can say, when confronted by Judge O'Connor, is, that Mann denied some things he had said before, *and said he had acted in good faith with the appellee, and was not liable to it for the* $20,000.

The sixth, elicited nothing; and in the seventh, Mann *denied owing appellee anything; but, to avoid a law-suit, he would give* $2,000 *in good funds to settle—but refused to pay any more.*

I may remark that Mr. Baldwin's statements and claims, to Mann, is all there is in his deposition of any value to the appellee; but since Mann denies every material claim, I am at a loss to know why it was taken, unless it was to gratify Baldwin, and give him an opportunity to preserve the evidence of his *smartness* in stating his side of the story.

One thing is certain, it does not prove that Mann received the $20,000 for appellee, or that it was understood that it should be considered a part of the $110,000, when the contract of August 8, was made; or that the Georgia Bank had ever advanced more than $90,000 under that contract. *And it does show that Mann has always been consistent in his claim that the Bank had nothing to do with this* $20,000.

There is one other remark of Baldwin, which will show how uncertain he is in his recollection or his extreme anxiety to make out a case for appellee. He makes Mann say three times, in the first interview, "*Burr Higgins, President of the Georgia Bank.*" Now, it will be seen by referring to the contract of October 20, 1854, that it was signed by Ransom, as President, and Storm, as Cashier, and the contract of August 8, 1855, is signed by Taylor, as President, and Fonda, as Cashier. And no where is it pretended that Higgins was President, except in this deposition. It is, therefore, entirely improbable that Mann ever spoke of him as President. Again, Mann, in his answer at page 78, says that when he got this $20,000, Higgins had not obtained possession of the office or papers, and the old officers had not and would not resign. So he was not President or even an officer.

One more remark, and I shall leave this deposition. At the bottom of page 101, he says, "*I told him that from his own statements, this* $20,000 *was part of the* $110,000, * * *that I had now learned from him all the facts*, and demanded payment of the whole $20,000," etc. When Mann again said he had not used the funds of the Rock Island Bank; that it was his own; and that the Georgia Bank had never furnished the Rock Island Bank but $90,000. I can only understand how Mr. Baldwin can claim that Mann's statements iterated and re-iterated that this $20,000 formed no part of the $110,000; that he received it under private arrangement with Higgins; that the Bank had nothing to do with it, was evidence that it was a part of the $110,000, and belonged to the Bank, by supposing that he mistook his own constant claim that such

were the facts, for Mann's statements, and supposed that Mann's denials were overcome by his theory.

Mr. Osborn was also examined. In his answer to the fifth interrogatory he makes a statement which, on examination, will show that he has mingled different transactions, and that he does not contradict the answer; that is to say that it and the answer are reconcilable.

1.—He says in his previous answer, that Mann went to New York in January, 1855.

2.—In this answer he says he went, after consultation, to make arrangement for obtaining the circulating notes of some banking institution to be used by appellee as circulation, etc.

3.—That on his return he said he had negotiated with parties, Higgins among the number, for a supply of currency, to be furnished by *a new banking institution soon to be put into operation in Georgia*, to be styled the *Manufacturers' & Mechanics' Bank.*

4.—That he had furnished or agreed to furnish $30,000 in specie of the funds of appellee, to enable the new bank to commence operations.

5.—"*I think* he stated that the whole or a large part *of the stock of the new Bank had been transferred to him as security* for the loan until it could be repaid."

6.—"And either at that or some other time, he told me he had returned this stock to enable the new Bank to go into operation."

7.—"That $20,000 of the notes of the M. & M. Bank had been placed in *his* hands as security to protect *him* from liability in connection with the Bank."

8.—"That this $20,000 could not be used as currency by the Rock Island Bank; but under a new contract was to be exchanged for new notes of smaller denominations to be executed and prepared from a plate engraved expressly for the use of the Rock Island Bank."

We now refer your Honor to the allegations of the bill on page 50, to e effect that the M. & M. Bank had not fulfilled its agreement, Exhibit . 1; had not repaid the $30,000 loaned it; that Osborn was not satis- d with the contract, did not wish it to continue in his name, "*said th cashier,*" *went to New York to look after its interest in the premises, d to obtain payment or security of the* $30,000, &c. Now this state- ent shows that Mann did not go to New York in January to make

arrangements to get circulation, but to secure the payment from the M. & M. Bank of the $30,000. Mr. Osborn has confounded October '54 with January '55.

It being the conceded fact that the M. & M. Bank was assuming to act in October, 1854, having a President and Cashier; that it did in that month issue and deliver to Mann $38,000 of its circulating notes of the denominations of $20, $50 and $100, and that it made a contract with Osborn, who was President of, and for the benefit of the appellee, and the fact being that Mann's visit in January was to get payment, or security for payment, of this $30,000, which had already been loaned to the M. & M. Bank, we say again that Mr. Osborn shows evident mistake when he says that it was after Mann's return from New York, in January, 1855, that he told him he had made arrangements to use the circulating notes of the M. & M. Bank, or that he had furnished or agreed to furnish $30,000 to enable it to commence operations.

The Bank was already organized; it had issued bills of large denominations. Mann had already advanced $30,000 for appellee, and received the drafts of the M. & M. Bank, and $38,000 of its circulating notes as security for the payment of the drafts in 45 and 60 days—see bill, page 49, paragraph 2. And the appellee had its contract to furnish $150,000 of its circulating notes in denominations of $5, a plate for which was to be engraved expressly for the R. I. Bank. This contract had not been performed by the M. & M. Bank; the $30,000 was in jeopardy and Mann's journey in January was to save that, and not to enter into another *wild cat scheme*.

Hence it is evident that it was not after the return in January that Mann told him he had loaned, or agreed to loan the $30,000. Nor was it then that he told him this new Bank was to be put into operation in [illegible] Georgia; nor did Mann then tell him that the circulating notes which he had received could not be used as currency by the R. I. Bank, but were [illegible] to be exchanged for notes of smaller denomination. It is a conceded [illegible] fact that these $20,000 were $5 of the same impression and from the same plate as the notes which were furnished to appellee for circulation, and there were to be no smaller notes used by it. And when Mr. Osborn speaks of exchanging the notes Mann had received for smaller ones, it is evident he has confounded a conversation or statement had [illegible]

made relative to the $38,000 in $20, $50 and $100 that Mann received in October, with the $20,000 received in January.

Again, it is evident that he has confounded the October and January transaction in another way. Burr Higgins was not connected with the October transaction, nor with the organization of the M. & M. Bank. Nor was any of its stock held by Mann in any way, either as security for the $30,000 or otherwise, nor did he have any interest in the M. & M. Bank until January, 1855. All the security he had for the $30,000 was the contract with Osborn, the drafts of the M. & M. Bank and its notes for $38,000. The $20,000 had no connection with the original loan of $30,000, nor the contract with Osborn, nor the original arrangement for the use, as currency, by the R. I. Bank of the notes of the M. & M. Bank. Nor is it any where pretended that when this $20,000 was received by Mann from Higgins, there was any arrangement existing, or negotiations pending for an arrangement, by which appellee could use the notes of the M. & M. Bank for currency. Mr. Osborn's memory, after the lapse of more than eight years, is treacherous and unreliable. He does not prove the case made by the bill, nor sustain the appellee's theory.

If, however, we refer the 2nd, 3rd, 4th and 8th subdivisions I have made of this answer to the October transaction as stated by both bill and answer, it will have meaning and point, and be consistent with itself and with the case made by the bill in that behalf, and will in no way contradict the answer. In no other way can it be reconciled with truth as the facts are conceded.

And if we refer the 5th, 6th and 7th subdivisions to the January transactions, then the answer of the defendants is sustained, and the witness recollection will nearly harmonize with the facts. He falls into some errors but we can detect and explain them.

He says, "I think he said a large part of the stock had been transferred him as security for the loan, until it could be paid."

Now three-fifths had been assigned to him, as shown by the contracts, nexed to the answer. Schedule No. 1 and No. 2. It could not as security for the loan, because none was made The $38,000 hich Mann delivered to Higgins, was no loan either to him or to the ank, but was that he should collect $30,000 already loaned, and the

interest from the Bank or return them, the latter of which he did, in March after. Hence we see that the latter part must refer to the October transaction, and to the $38,000 large notes, which were received as security for the loan, and it will be exactly according to the facts, when the first part of this answer shall say that, the greater part of the stock had been transferred to Mann. The answer of the defendants, and the written contracts explain the transaction fully.

Again he says, "Mann said the $20,000 had been placed in *his* hands as security, to protect *him* from liability in connection with the Bank.

Now the facts are that Mann had given his *notes* and assumed liabilities to $18,000, and this $20,000 was given him in consideration of that, and of course because he became one of the owners of the Bank and assumed by that means some liability and acquired some rights. Higgins had agreed to pay $30,000 bonus; Mann agreed to pay three-fifths of it and to own three-fifths; $20,000 was about three-fifths of this bonus If we construe this language with the allegations of the arswer, the written contracts, and memoranda concerning this $20,000, and bear in mind that all these were laid before the directors of appellee, and remember that after a full explanation, they decided, upon advice of *council learned in the law*, that the Bank had no rights in the $20,000 and directed Mann to make the contract with Hotchkiss, under date of February 20, 1856, and assented to the private contract between Mann and Hotchkiss, of same date, Schedules 6 and 7 to answer, your honors will see that Mr. Osborn's testimony does not, as we have claimed, in any way contradict the answers.

We call attention to his answer to the 8th interrogatory, where he says that Mann said, in the meeting before the board of directors, that the M. & M. Bank had only furnished $90,000 under the August contract, *and that the $20,000 received by him from Higgins, was under a different contract and for a different purpose.*

Now, then, we have the evidence, by the testimony of appellee's w nesses, agreeing with the averments of the answer, that Mann did not c ceal the receipt of this $20,000; and we have no evidence as yet, th was to or did form, or was considered as any part of the $110,000, rather that it was not and did not; therefore, the decree, when it decl that he did conceal its receipt, is grossly erroneous, because unsuppor

by evidence; and unjust towards Mann, because it convicts him of fraud, towards the Bank, and embezzlement of its moneys, when the evidence shows that all his acts were strictly in accordance with his duty.

William L. Lee—I shall ask your honors to read his deposition, and for me apply the criticism I have made upon Mr. Osborn's deposition. Vagueness and uncertainty are its ruling characteristics as to this $20,000. He does say that Mann claimed that but $90,000 had been furnished by the M. & M. Bank, and that the $20,000 was a personal matter, and did not belong to the Bank. He does not say that when the contract of August 8th was made, it was agreed that this $20,000 should be a part of the $110,000. He does say that Higgins and Fonda claimed that it was a part, while Mann denied it. Their statements thus made are not evidence. They were competent witnesses, but are not called to prove the truth of their claim, and I say it is evident from the contracts made, and the facts set out in the answers, that they never could have substantiated their claims by their oaths. If this $20,000 was a part of the $110,000, why is the August contract silent about it; why does it provide for furnishing $110,000, if it had already furnished $20,000?

The agreement is *to furnish and* "on or before the first day of October next deliver to Mann the notes to the amount of $110,000." It is in the future and covers no past transaction. Lee remembers that the matter of the $20,000 and $90,000 was laid before the directors by Mann. *Kinney*, who was called, knows nothing of importance, but I think I am warranted in saying that he had seen on the books a record of the matter of the $20,000, having been considered by the board.

We shall dismiss this part of the case, by repeating, that the answers are required on oath; they are so made, and they completely answer and deny the allegations of the bill, in respect to the claim that this $20,000 was a part of the $110,000, or in any way belonged to the appellee, and the evidence does not contradict and overthrow the answer.

If however we are wrong in the foregoing position, still—the denials and allegations in the answer, fully meet the allegations in the bill, that the real estate of Mrs. Mann, was purchased by Mann; or that this $20,- [illegible] ever, have in any way been used to purchase the land or make the improvements. It is established that Mrs. Mann had a separate estate,

derived in no way from her husband, at and before the organization of the R. I. Bank, and so could not have derived it from that institution in any way; that she paid it in part towards this property, and obtained credit in part, as well for the land as for the improvements made on it. And there can be no pretence for holding it liable for her husband's debts, or declaring a trust with respect to it in favor of appellee.

I do not deem it necessary to go over the allegations of the bill and answer upon the claim, that the money of appellee was used to purchase the lands owned by Mrs. Mann, or to pay for the improvements. Your honors will find the answer so full and certain, as to leave no doubt that the allegations of the bill are denied; and as there is no evidence on the point, nor any attempt to make any proof contradictory of the answer in this respect, there can be nothing to discuss in this behalf.

In conclusion we say that, if Mann has taken to himself money belonging to the Bank, the Bank has a perfect and adaquate remedy at law, by action to recover it from him. It cannot maintain a bill in equity when the only relief it can have is a personal judgment against Mann, for the amount of the money he has used. The only ground upon which it could come into a court of equity, was, that its money had been used in acquiring this property by Mrs. Mann, or by Mann and taking the title in her name. If that were proven, a trust would arise by implication of law, and a court of equity would declare it, and compel the execution of it by a conveyance by Mrs. Mann to it. But it would not first give a personal judgment against Mann, and then order the property sold to pay the judgment. If this real estate were the property of the Bank in equity, then as it was seeking to obtain it by the decree of a court of equity, that decree should give it the property directly, and not first give a personal judgment against Mann for the money, and thus make the money his from the time he misappropriated it, and then order a sale of the property of the Bank, to pay the personal judgment against Mann.

Garfield vs. Hatmaker, 15 N. Y., 475.

But since it has failed to discover any trust in its favor, the whole ground work of its case is gone; there is no case for equitable cognizance and the decree must be reversed and the bill must be dismissed.

Thomas Wilson,

J. A. SLEEPER,

Of Counsel for Appellants.